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Appendix F

Keweenaw Bay Indian Community
Testimony at Michigan Department of
Environmental Quality Contested Case
Hearing

Transcript Volume I

STATE OF MICHIGAN

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of: File No.: GW1810162 and MP 01 2007

The Petitions of the Keweenaw Bay Indian Community, Huron Mountain Club, National Wildlife Federation, and Yellow Dog Watershed Environmental Preserve, Inc., on permits issued to Kennecott Eagle Minerals Company.

Part: 31, Groundwater Discharge 732, Nonferrous Metallic Mineral Mining

Agency: Department of Environmental Quality

Case Type: Water Bureau and Office of Geological Survey

D R A F T T R A N S C R I P T HEARING - VOLUME NO. I

BEFORE RICHARD A. PATTERSON, ADMINISTRATIVE LAW JUDGE Constitution Hall, 525 West Allegan, Lansing, Michigan Monday, April 28, 2008, 9:30 a.m.

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Petitioner's Exhibit 8, slide 1

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NOTE: Full exhibit list will be included in final transcript

25

1 JUDGE PATTERSON: Thank you, Mr. Townsend. We'll
2 take about a ten-minute break.

3 (Off the record)

4 MR. EGGAN: We are ready, your Honor.

5 JUDGE PATTERSON: Okay.

6 MR. EGGAN: Call Mr. Jason Ayres to the stand.

7 REPORTER: Do you solemnly swear or affirm the
8 testimony you're about to give will be the whole truth?

9 MR. AYRES: I do.

10 JASON ALLEN AYRES

11 having been called by the Petitioners and sworn:

12 DIRECT EXAMINATION

13 BY MR. EGGAN:

14 Q Good afternoon, Mr. Ayres. Can you give your full name for
15 the record, please, and spell your last name?

16 A Yes, Jason Allen Ayres, A-y-r-e-s.

17 Q And what do you do for a living, Mr. Ayres?

18 A I am the tribal real estate officer for the Keweenaw Bay
19 Indian Community.

20 Q How long have you been the tribal real estate officer at
21 Keweenaw Bay?

22 A Twelve years.

23 Q What is your educational level?

24 A In 1993 I earned a Bachelor's of Science in biology from
25 Northland College in Ashland, Wisconsin.

- 1 Q How did you end up at the Keweenaw Bay Indian Community?
- 2 A I worked an internship with the Michigan DNR in fisheries
3 for a couple of summers during college and decided to stay
4 in the area and subsequently began employment with the
5 tribe.
- 6 Q What are the duties of a tribal real estate officer?
- 7 A I'm responsible for the acquisition of real property for the
8 tribe, leasing that property back to its members and
9 sometimes non-members, as well as management of the land
10 records of the tribe and management of the tribe's
11 transportation facilities, similar to a county road
12 commission.
- 13 Q I see. Are you a member of the Keweenaw Bay Indian
14 Community yourself?
- 15 A No.
- 16 Q Are any members of your family members?
- 17 A Yes, my wife is a member as well as my two children.
- 18 Q All right. I'd like to focus on the community's real
19 property holdings and its relationship to real property in
20 the Upper Peninsula. But first of all, we know that this
21 tribe has a reservation, but apparently it has land holdings
22 that are not on the reservation but throughout the Upper
23 Peninsula?
- 24 A Yes.
- 25 Q Are you familiar with the proposed Kennecott mine project in

1 Marquette County?

2 A Somewhat, yes.

3 Q Okay. Does the community hold any real property in the
4 vicinity of the proposed mine project?

5 A We do own 40 acres located in Powell Township, section 33
6 township 51 north, range 28 west.

7 Q And you have that memorized?

8 A I know most of the parcels off reservation by heart.

9 Q I see.

10 A There's just a few of them, so --

11 Q Okay. Well, let me show you what we have pre-marked as
12 Exhibit -- Petitioner's Exhibit Number 19. I'm going to ask
13 you if you know -- well, let me handle it this way. This is
14 a warranty deed for a parcel owned by the community?

15 A Yes.

16 Q All right. And this warranty deed proposes to transfer the
17 property from a Mr. Richard Uren, U-r-e-n, to the Keweenaw
18 Bay Indian Community?

19 A Yes.

20 Q Okay. And it looks like the transaction occurred on May 8th
21 of 2006?

22 A Yes.

23 Q Very good.

24 MR. EGGAN: Can I get you to cull up the first
25 part of the document for me, please?

1 Q Can you read that okay?

2 A Yes.

3 Q All right. And that indicates that this transaction
4 occurred -- I think it's May 8th of 2006 and it looks like
5 the tribe acquired this property for \$60,000?

6 A Yes.

7 Q Okay. Now, down below it at the bottom --

8 MR. EGGAN: And again, what we've done, your
9 Honor, is pulled out a part of this deed.

10 Q At the bottom it talks about a parcel of land to the
11 southwest quarter of the northwest quarter -- I'm not sure
12 why we did that -- the southwest quarter of the northwest
13 quarter of section 33, Powell Township, Marquette County,
14 Michigan; is that right?

15 A Yes.

16 Q And this document bears the seal or the notification from
17 the register of deeds in Marquette County that it was
18 recorded with the register of deeds on May the 8th of 2006,
19 doesn't it?

20 A Yes.

21 MR. EGGAN: Your Honor, at this point we would
22 offer Exhibit 19 into evidence.

23 MS. LINDSEY: No objection.

24 MR. REICHEL: No objection.

25 JUDGE PATTERSON: Okay. No objection it will be

1 entered.

2 (Petitioner's Exhibit 31-19 received)

3 Q What is the size of this parcel?

4 A Forty acres.

5 Q Is the -- is this parcel on or near any body of water?

6 A Yes. There is a tributary to the east branch of the Salmon
7 Trout River that flows across the southerly part of the
8 parcel.

9 Q Very good. Are you familiar with the term "riparian"?

10 A Yes.

11 Q All right. Is this a so-called riparian parcel?

12 A Yes.

13 Q Okay. Now, to give our hearing officer some context, is
14 this parcel within the Yellow Dog Plain?

15 A Yes.

16 Q Okay. I wonder if you could get up and show us on the map
17 that has marked as Exhibit 32 where our parcel is.

18 A Yes.

19 Q I have to count, of course, backwards because these sections
20 are not labeled. It would be located right here
21 (indicating), just south of the label dot.

22 A Very good. Now, were you here this morning when Mr.
23 Torreano testified?

24 Q Yes.

25 A All right. And when Mr. Torreano testified he identified

1 where the Keweenaw Bay Indian Community parcel was?

2 Q Yes.

3 A Was he correct in his identification?

4 Q Yes, he was.

5 A Okay. You can have a seat again.

6 Q I may not have asked you this. What is the size of the

7 parcel that is owned by the Keweenaw Bay Indian Community?

8 A The parcel is 40 acres, 1,320 feet square.

9 Q Now, if I talk about the so-called "Ceded Territories," do

10 you know what I'm talking about?

11 A Yes, I do.

12 Q Okay. Is this parcel within the Ceded Territories?

13 A Yes, it is.

14 Q Do you know how far this parcel is from the Kennecott mine

15 site, from the treated water infiltration system there?

16 A The southwest corner of the property is one and a half miles

17 from the TWIS.

18 Q Have you ever visited this parcel yourself?

19 A Yes, I have.

20 Q Do members of the community use the parcel?

21 A Yes, they do.

22 Q What do they use it for, if you know?

23 A Hunting, and we had an individual that lived on the

24 property, as well as gathering.

25 Q Are you familiar with a feature in the Yellow Dog Plain

1 known as Eagle Rock?

2 A Yes.

3 Q Okay. Do you know how far the parcel is from Eagle Rock?

4 A The southwest corner is approximately 1.8 miles from Eagle
5 Rock.

6 Q Have you visited the area near the mine for non-business
7 purposes unrelated to your duties?

8 A Yes; yes.

9 Q Okay. Based on your observation, do members of the
10 community use the so-called Ceded Territories near the mine?

11 A Yes, they do.

12 Q What have you seen? What have you seen members of the
13 community utilizing that area for?

14 A I have observed members of the community hunting and
15 gathering in the Ceded Territory in the Yellow Dog Plains.

16 Q All right.

17 MR. EGGAN: May I have Exhibit 18 shown, please?

18 Q Mr. Ayres, are you familiar with the boundary lines, the so-
19 called Ceded Territories for the 1842 treaty?

20 A Yes, I am.

21 Q Very good. And how are you familiar with that?

22 A It is part of my job responsibility to know where those
23 boundaries are for the purposes of mapping.

24 Q Looking at Exhibit 18; does Exhibit 18 accurately depict the
25 area of the 1842 treaty boundaries?

1 A Yes.

2 MR. EGGAN: Jan, can you blow the part of the map
3 up that is the Upper Peninsula, please? Very good.

4 Q Now, Mr. Ayres, if you can point for the judge's benefit the
5 general area of the Kennecott mine area on this area -- on
6 the map?

7 A Yes. It'd be approximately located in -- somewhere in the
8 vicinity of the small outcrop of Baraga County that juts out
9 into Marquette County.

10 Q Okay. And that area, the area of the mine, is within the
11 so-called Ceded Territories?

12 A Yes, it is.

13 Q Very good.

14 MR. EGGAN: Your Honor, we'll talk about the Ceded
15 Territories with the next witness.

16 JUDGE PATTERSON: Okay.

17 Q Are you as a non-tribal member, Mr. Ayres, permitted to
18 exercise treaty rights within the Ceded Territories?

19 A No.

20 Q What about your relatives?

21 A Yes, they are.

22 Q Have you made any observations about the community's use of
23 the Yellow Dog Plain and that area of the Ceded Territories
24 that is in the vicinity of the mine?

25 A Could you repeat the question?

1 Q Yes. Have you had an opportunity to make any observations
2 about community members and their use of the Ceded
3 Territories in the vicinity of the mine?

4 A Yes, I have.

5 Q And you said that you saw -- a minute ago you told us that
6 you saw people utilizing it for hunting, fishing and
7 gathering?

8 A Hunting and gathering.

9 Q Okay. Is there anything about the Yellow Dog Plain in your
10 observation that is unique to the tribe's culture?

11 A The uniqueness of the Yellow Dog Plain for the tribe in the
12 sense that it's unique to me and others in the community,
13 not just non-members, would be that it is an area that is
14 well traveled, well visited and used frequently by both
15 tribal members and non-tribal members.

16 Q If the area in the Yellow Dog Plain near the mine were
17 impacted by mining operations, do you have an opinion as to
18 whether members of the tribe would utilize that area or the
19 recreational hunting, gathering activities that you've seen?

20 A It would definitely have an impact on those uses,
21 particularly if the groundwater did become contaminated. It
22 would be less likely that people would use that area and it
23 would also be likely that the community would close certain
24 areas because of that contamination to the exercise of
25 treaty rights.

1 Q Why do you think that?

2 A The community has in the past closed certain lakes in the
3 Ceded Territory to tribal fishing because of mercury
4 contamination.

5 Q What about the -- what about the community's use of the 40-
6 acre parcel that we have described? Do you have a sense
7 that the community's use of that parcel would be impacted if
8 there were an impact by mining operations?

9 A Absolutely, not only in the hunting and gathering and
10 potentially fishing, but also economically. It would
11 definitely impact the timber resource value as well as the
12 value of the stream that runs through the property. It
13 would impact our ability to lease that property to members
14 and non-members.

15 Q Is that true if there was an impact by groundwater
16 contamination?

17 A Yes.

18 MR. EGGAN: I have nothing further.

19 CROSS-EXAMINATION

20 BY MS. LINDSEY:

21 Q Mr. Ayres, you mentioned that the parcel -- the 40-acre
22 parcel that you've talked about there was an individual who
23 lived there no longer lives there; is that correct?

24 A Not to my knowledge.

25 Q And the parcel was purchased in -- is it May of 2006?

1 A Yes.

2 Q And you understand that the mine application was submitted
3 in February of 2006?

4 A I am not familiar with those dates.

5 Q Okay.

6 MS. LINDSEY: I have nothing further. Thank you.

7 CROSS-EXAMINATION

8 BY MR. REICHEL:

9 Q Mr. Ayres, do you know why the Keweenaw Bay Indian Community
10 purchased this 40-acre parcel?

11 A I have not been told directly why we have purchased the
12 property. We have purchased other properties outside of the
13 reservation boundaries that are within the Ceded
14 Territories.

15 Q I believe you testified on direct examination though that in
16 your -- based on your knowledge there are relatively few
17 properties outside the exterior boundaries of the
18 reservation; correct?

19 A That is correct.

20 Q And so do you know whether there was any relationship
21 between the tribe's decision to purchase this 40-acre parcel
22 and Kennecott Eagle Minerals Company proposal to construct
23 the mine in the vicinity?

24 A I would have to assume so, yes.

25 Q So it's your understanding that the KBIC acquired this

1 parcel in -- because it understood that a mine was going to
2 be built in the vicinity?

3 A I would have to assume that, yes.

4 MR. EGGAN: I guess I'm going to object to
5 relevancy on that issue, your Honor. It really doesn't
6 matter why they acquired the property. They have the --
7 they have the property, they have the rights.

8 JUDGE PATTERSON: I'll let the answer stand. I'll
9 overrule the objection.

10 MR. REICHEL: I've nothing further. Thank you,
11 sir.

12 MR. EGGAN: I have nothing further. Thank you,
13 Mr. Ayres.

14 THE WITNESS: Thank you.

15 (Witness excused)

16 MR. EGGAN: Our next witness, yeah, is Ms. Susan
17 LaFernier. Ms. LaFernier.

18 REPORTER: Do you solemnly swear or affirm the
19 testimony you're about to give will be the whole truth?

20 MS. LAFERNIER: I do.

21 SUSAN LAFERNIER

22 having been called by the Petitioners and sworn:

23 DIRECT EXAMINATION

24 BY MR. EGGAN:

25 Q Good afternoon, Ms. LaFernier.

1 A Good afternoon.

2 Q Can you tell the Hearing Officer your name and spell it,
3 please?

4 A My name is Susan J. LaFernier, L-a-F-e-r-n-i-e-r.

5 Q And are you member of the Keweenaw Bay Indian Community?

6 A Yes, I am.

7 Q How long have you been a member of the Keweenaw Bay tribe?

8 A I have been a member all of my life.

9 Q Are you a member of the tribal council of the Keweenaw Bay
10 Indian Community?

11 A Yes, I am.

12 Q And how long have you been on the tribal council?

13 A Since 1998.

14 Q About ten years?

15 A Uh-huh (affirmative). Correct.

16 Q And do you presently hold an official position on -- in
17 addition to being a member of the tribal council? Do you
18 hold a position as an officer?

19 A Yes, I do. I'm currently the vice president.

20 Q And how long have you been the vice president of the tribe?

21 A Since February of 2008. And I also was vice president in
22 2004.

23 Q What are the duties of the vice president generally?

24 A The vice president will preside at tribal council meetings
25 and also will attend to matters that pertain to the general

1 welfare of the committee when the president is absent.

2 Q Have you held other official positions within the community
3 itself?

4 A Yes, I have.

5 Q What are the other positions you've held?

6 A I held the position of chief executive officer in 2000 and
7 2006. I was the secretary of the council in 2002 and 2003.
8 And I was the president of the council from 2005 through
9 2007. And I also have held an accounting position for
10 approximately 20-some years.

11 Q Are you an accountant?

12 A Yes.

13 Q Do you live on the reservation at the community?

14 A Yes, I do.

15 Q Where -- for the Judge's benefit, where is the Keweenaw Bay
16 Indian Community? Where is the reservation?

17 A The reservation is located on land in Baraga, L'Anse and
18 Arvon Townships in Baraga County.

19 Q Do all of the community's members lives in its reservation?

20 A No, they don't.

21 Q How many members are on the reservation itself?

22 A Approximately 900.

23 Q And do you know an approximate total of the number of
24 community members that there are?

25 A Yes, I do. There are approximately 3,450 members.

1 Q Say that again. 3,400?

2 A And 50.

3 Q Now, I've been using the term "tribe" and "community"
4 interchangeably. Is that a fair thing to do? Is the
5 Keweenaw Bay Indian Community a Native American tribe?

6 A Yes, it is.

7 Q Is the community a part of any larger Native American nation
8 within the United States?

9 A Yes, we are. We part of the Ojibwe Nation.

10 Q Can you tell the Hearing Officer a little bit about how the
11 community itself came into existence?

12 A It's quite a long and detailed story. I know there are
13 datings back to the 1500's when the Ojibwe Nation would
14 travel from the Atlantic seaboard across the various lands
15 that are shown today. There are approximately right now 11
16 Ojibwe tribes that have signed the 1836, '37, '42 and '54
17 treaties across Wisconsin, Michigan and Minnesota.

18 Q How long has the community -- the Keweenaw Bay Indian
19 Community been in existence in the Upper Peninsula, if you
20 know?

21 A I want to say for several hundreds of years, yes. I want to
22 say from the 1500's also, yes.

23 Q So members of your community have been in the Upper
24 Peninsula in the area of L'Anse and in this area of the
25 Upper Peninsula for hundreds of years?

1 A Right.

2 Q Does the tribe have so-called federal recognition?

3 A Yes, we do.

4 Q What does it mean to be a federally recognized Native
5 American tribe?

6 A We are recognized by the U.S. government as a sovereign
7 government. We are able to self regulate our members
8 independent. We are an independent nation, and the
9 government recognize that.

10 Q The federal government recognizes that?

11 A Yes.

12 Q What about the community's relationship with the State of
13 Michigan? Is there a relationship between your tribe and
14 Michigan government?

15 A Yes, there is.

16 Q What is that relationship?

17 A We have a government-to-government also with the state as we
18 do with the federal government. In the past we have had
19 meetings with the Department of Natural Resources, the
20 Department of Environmental Quality, Department of
21 Transportation and most recently in the past, I want to say,
22 three or four years, we have had annual meetings with the
23 governor with the 12 recognized tribes of Michigan.

24 Q Let's about the community government in general. And I
25 don't want to take a long time with this, but I think it's

1 important for the Hearing Officer to have a sense of
2 government operations. What is the structure or the form of
3 government that the tribe uses?

4 A The tribe has a 12-member tribal council that is elected by
5 its members who live on the reservation. And that is guided
6 by our 1936 constitution.

7 Q Does the tribe have a tribal code that it utilizes and
8 applies to members of the tribe?

9 A Yes, we do.

10 Q I think that you may have already answered this. But are
11 tribal council members elected by members of the community?

12 A Yes.

13 Q What kind of services does tribal government provide to
14 members of the community?

15 A We provide a number of services. We have a law enforcement
16 department, a conservation department, a natural resource
17 department, social services department, health clinic,
18 medical and dental, realty, of course. We do issue our own
19 license plates.

20 Q Does the tribe issue licenses to people who -- for hunting,
21 fishing, that sort of thing?

22 A To our members.

23 Q And are those governed by this tribal code that we just
24 mentioned?

25 A Yes, they are.

1 Q Let's talk about a term that I used Mr. Ayres, the so-called
2 ceded territories. In the context of the community, what
3 are we talking about when we refer to the ceded territories?

4 A The land included in the ceded territory are lands that were
5 ceded to the U.S. government. But in that treaty we
6 retained the right to hunt, fish and gather on those lands.
7 Those are rights that were not given to us. Those are the
8 rights that we were -- we always had as first owners of the
9 land.

10 Q Okay. So those were not rights that were given to you.
11 Those were rights that you reserved?

12 A Right.

13 Q Okay. Now, you mentioned a treaty. Are we talking about
14 the treaty of 1842?

15 A Yes.

16 Q Okay. Let's, if we can, call up Exhibit Number 19.

17 MR. EGGAN: I'm sorry. It is 17. Yes. Your
18 Honor, this is Exhibit 17.

19 Q Do you recognize this document?

20 A Yes, I do.

21 Q And is this the treaty with the Chippewa dated 1842?

22 A Yes, it is.

23 Q The signatories to this treaty are the United States
24 government and the leaders of the various Native American
25 tribes in the Ojibwe Nation in 1842, I take it?

1 A Correct.

2 Q Okay. And those leaders are listed there at the top of the
3 document and I think they're also listed within the document
4 itself as signatories?

5 A Yes, they are.

6 MR. EGGAN: Your Honor, at this point, I would
7 like to offer the Treaty of 1842 into evidence. It would be
8 Exhibit 17.

9 MS. LINDSEY: No objection.

10 MR. REICHEL: Your Honor, I do have an objection
11 that goes to relevance. I don't think the issue before this
12 tribunal -- or this tribunal is competent to make any
13 determination of the extent or nature of legal -- of the
14 rights reserved by the signatories to the treaty. That
15 really isn't germane here. Without going into detail and
16 not trying to be confrontational, there have been and
17 continues to be disagreements between the State of Michigan
18 and the Keweenaw Bay Indian Community about the extent and
19 nature of those rights. My purpose is not to be
20 confrontational but simply to note that, in the context of
21 this proceeding, I understand that the purpose of this
22 witness' testimony is to establish the standing of the
23 Keweenaw Bay Indian Community with respect to challenge to
24 the permitting. I can say on behalf of the DEQ, the DEQ
25 does not contest the Keweenaw Bay Indian Community's

1 standing to bring this proceeding. In so doing, I'm not
2 conceding any issue of the legal effect of the treaty. We
3 will stipulate on behalf of the DEQ that the Keweenaw Bay
4 Indian Community has proper standing as a party to this
5 proceeding. So with that stipulation, I don't believe that
6 it's either -- I mean, the treaty is a public document. It
7 exists as a matter law.

8 MR. EGGAN: It is, yes.

9 MR. REICHEL: To the extent it's germane, the
10 parties are free to argue as to its effect and legal
11 significance. But I don't think it needs to be a part of
12 the evidence in this record.

13 MR. EGGAN: Do we have a stipulation from the
14 Kennecott Eagle Minerals Company that we have standing in
15 this matter?

16 JUDGE PATTERSON: I haven't heard one.

17 MS. LINDSEY: No. We are not making that
18 stipulation.

19 MR. EGGAN: Well, then in that case, your Honor,
20 we would offer the treaty. And I would like to have the
21 witness testify just a little bit with respect to this -- to
22 this document.

23 JUDGE PATTERSON: Well, it is a public document
24 and I think a matter of record. So I will admit it on that
25 basis.

1 MR. EGGAN: Thank you.

2 (Exhibit P-31-17 received)

3 Q Let's look at Article I of the treaty. And if we could have
4 the first -- maybe the first part of that. Yeah, that'd be
5 great. That'd be fine. Okay. And let's look at this
6 together. "The Chippewa Indians of the Mississippi and Lake
7 Superior cede to the United States all the country within
8 the following boundaries." And it gives a set of boundaries
9 that we would call the ceded territories?

10 A Yes.

11 Q Okay. By the way, does this Treaty of 1842 -- does it apply
12 only to members of the community or does it apply to other
13 Native American peoples within the United States?

14 A It applies to the tribe that signed the treaty.

15 MR. EGGAN: Let's to Article II, if we could,
16 please, Jan. And that's on page 2. And if you could blow
17 up Article II for me, please.

18 Q Let's take a look at this together. I want to read this
19 article and make sure that my reading is correct.

20 "The Indians stipulate for the right of hunting on
21 the ceded territory, with the other usual privileges of
22 occupancy until required to remove by the President of
23 the United States, and that the laws of the United
24 States shall be continued in force, in respect to their
25 trade and intercourse with the whites until otherwise

1 ordered by Congress."

2 What do you understand this particular provision of the
3 treaty to allow you to do?

4 MR. REICHEL: Excuse me. Counsel, just for the
5 record, I'm not trying to disrupt this, but I'd like to have
6 a continuing objection to any inquiry which goes to the
7 issue of the legal effect of this treaty. I'll just leave
8 that for the record.

9 MS. LINDSEY: And we would join in that objection
10 as well.

11 Q Go ahead, Ms. LaFernier. What do you understand Article II
12 to do?

13 A This gives us the right to hunt, fish and gather.

14 MR. EGGAN: Your Honor, with respect to Article
15 II, there have been federal court holding at least one of
16 which has been acknowledged by the Kennecott side of this
17 case that define the second line there where it says "with
18 the other usual privileges of occupancy" to mean fishing and
19 gathering. So while it says the Indians stipulate for the
20 right of hunting on the ceded territories, the second
21 provision which says "the other usual privileges of
22 occupancy" mean fishing and gathering. And we can provide
23 the Court with a cite and, at the appropriate time, will do
24 so. So essentially from our perspective, Article II means
25 the right to hunt, fish and gather on the so-called ceded

1 territories.

2 MS. LINDSEY: I'd object to the testimony from
3 counsel at this time.

4 MR. REICHEL: I join in the objection. I mean,
5 again I think that, quite frankly, the issue of the legal
6 effect, to the extent it is at all relevant, which I submit
7 it is not -- but to the extent it is relevant, I think
8 that's the proper subject for briefly as opposed to
9 characterization by counsel.

10 MR. EGGAN: And I don't mind doing that. I just
11 don't want the Hearing Officer to have a hole in what we're
12 talking about when it says "hunting." There is case law
13 admitted to by the other side that says that means hunting,
14 fishing and gathering. That's all I was trying to do with
15 that, Judge.

16 JUDGE PATTERSON: All right.

17 Q Is this treaty still in effect?

18 A Yes, it is.

19 Q To your knowledge, has it been -- has it been withdrawn by
20 Congress or by the President of the United States?

21 A No.

22 MR. EGGAN: Can we pull up Exhibit 18 again,
23 please? And show me again the Upper Peninsula.

24 Q Ms. LaFernier, this is a map that was admitted into evidence
25 with Mr. Ayres. But I want to confirm with you. Can you

1 show the Judge on this map where the reservations -- where
2 the tribe's reservation is initially?

3 A This.

4 Q Okay. And can you also show the Judge where the Kennecott
5 mine is proposed to be -- the approximately area? I realize
6 this is a small map.

7 A It's a small map. It's right along in this area here
8 (indicating). It's right around in this area right in here
9 (indicating).

10 Q And are you familiar with the location of the mine proposed
11 by the Kennecott Eagle Minerals Company?

12 A Yes.

13 Q Can you show the Hearing Officer that area? And maybe you
14 just did.

15 A (Indicating)

16 Q Okay. Just to make it clear, is the mine itself within the
17 ceded territories?

18 A Yes, it is.

19 Q And the area surrounding the mine is within the ceded
20 territory?

21 A Yes, it is.

22 Q You can sit down. Do community members continue to exercise
23 the rights granted in the 1842 treaty; that is to say, to
24 hunt, fish and gather within the ceded territories to this
25 day?

1 A Yes, we do.

2 Q And are these rights to hunt, fish and gather -- have these
3 rights, to your knowledge, been recognized by the
4 Michigan -- by Michigan government?

5 A Yes, they have.

6 Q Have you personally exercised those rights?

7 A Yes, I have.

8 Q How?

9 A I have been gathering on the Yellow Dog Plains since I was a
10 little girl with my parents. We gather blueberries, we
11 gather raspberries, thimbleberries along the way. It's a
12 wonderful road to travel. It's been well traveled. And I
13 can remember from since I was just a little girl.

14 Q Have you observed other tribe members -- tribal community
15 members exercising their rights within the ceded
16 territories? And again this is near the area of the mine
17 project.

18 A Yes, I have.

19 Q What have you seen people doing?

20 A Hunting. They hunt for deer, they hunt for partridge.

21 Q Okay. Now, a question about the Yellow Dog Plain itself.
22 Does the Yellow Dog Plain have any particular significance
23 to tribal members? And we're talking about the area of the
24 Yellow Dog Plain near the tribal -- excuse me -- near the
25 Kennecott mine project. Okay? Does that area have any

1 particular significance?

2 A Yes, it does. Many people gather there to socialize on the
3 plains. It is -- someone else testified it is a quiet
4 place. It's a serene place. The Chippewa people are called
5 nature's people. So, of course, that's the perfect place
6 for them -- the native people to gather.

7 Q When we were discussing this -- your testimony last night,
8 you mentioned that there has recently or that the tribe has
9 recently taken some steps to plant wild rice in the vicinity
10 of the mine project. Can you talk about that a little bit?

11 A Our natural resource department planted wild rice there a
12 few years ago and I was there last summer and it is growing
13 quite abundantly. I was very surprised to see it. And it's
14 right near the mine site right in the Salmon Trout River.

15 Q It's in the Salmon Trout River in the vicinity of the mine.
16 Any idea how far it would be from, say, the mine site -- the
17 proposed mine site itself?

18 A It's about maybe the length -- a little longer than this
19 room.

20 Q So it's -- it would be within 30 feet?

21 A Well, you have to travel across the road and go down a hill
22 to get to the river.

23 Q I see. Now, Ms. LaFernier, there is an outcropping in the
24 Yellow Dog Plain called Eagle Rock. Are you familiar with
25 that?

1 A Yes, I am.

2 Q And does Eagle Rock have a name that has been given to it in
3 your tribal language?

4 A Yes, it has.

5 Q What is that name?

6 A Migi zii wa sin.

7 Q Can you spell Migi zii wa sin for the court reporter,
8 please?

9 A It's M-i-g-i z-i-i w-a s-i-n.

10 Q I'm showing you, Ms. LaFernier, a photograph that has been,
11 I believe, previously admitted.

12 MR. EGGAN: Am I right? Has this been previously
13 admitted?

14 MR. HAYNES: Yes.

15 Q Okay. And it is Exhibit 11. Do you recognize that
16 photograph?

17 A Yes, I do.

18 Q What is that?

19 A That is Migi zii wa sin; Eagle Rock.

20 Q Does this outcropping, Eagle Rock, have any particular
21 significance to members of the community?

22 A Yes, it does.

23 Q What is that significance?

24 A It is a place of worship for our members. It has been for a
25 long, long time. It is a sacred place. It has its own

1 spirit. It's a place --

2 Q When you say that it has its own spirit, what does that mean
3 to you?

4 A You'd have to understand the way of the ojibwe regarding
5 spirit -- spirits. Animate and inanimate objects have
6 spirits.

7 Q And what is it about this outcropping that is attractive to
8 members of the community? Can you explain that?

9 A It's a place where many tribal members over hundreds of
10 years have, I believe, done their ceremonies. They've done
11 their fasts. They feast there. They pray there. And this
12 has happened, we know, when, as I mentioned earlier, with
13 the tribes that migrated from the Atlantic seaboard would
14 come here also to worship.

15 Q Have you personally worshiped at that site?

16 A Yes.

17 Q Would you mind telling our Hearing Officer about that, what
18 you do when you go there and what your -- what your worship
19 is?

20 A My worship is a -- is a prayer. I go there to pray. The
21 tribal council also went up to the rock last summer and
22 prayed also. We also had a feast there.

23 Q Now, I think when we were talking -- it's okay. I think
24 when we were talking last night, you talked about a spring
25 that is near Eagle Rock that has -- that has some

- 1 significance in your memory. What is the significance?
- 2 A There is actually a spring down -- just down from the road
3 from that area that I also remember going to all of the time
4 when I was a little girl with my parents. And we would
5 always go there for a drink of water, fresh water. And it's
6 still there.
- 7 Q Can you give us some direction of the -- of travel from this
8 photograph of Eagle Rock, would it be to the north, to the
9 west?
- 10 A To the west.
- 11 Q Any idea how far?
- 12 A Oh, it may be a mile or two.
- 13 Q Now, I think you were here for Mr. Ayres' testimony about
14 the parcel of land that is owned by the tribe in that area.
15 And he talked about the tribe's use of that particular
16 parcel. Do you have -- do you have any recollection of
17 tribal use of that parcel yourself?
- 18 A Yes, I do. Along with Jason, there was a tribal member that
19 was living there last year and practicing his traditional
20 ways, yes.
- 21 Q You need to speak up so that they can hear you.
- 22 A Oh, I'm sorry.
- 23 Q You said practicing this traditional ways?
- 24 A Yes.
- 25 Q What does that mean?

1 A Well, he lived off the land there. He built a lodge there.
2 He had a sweat lodge there. He stayed most of the summer is
3 what I'm aware of.

4 Q Does the tribe have any plans to sink a well on that
5 property?

6 A We don't have immediate plans, but that would definitely be
7 an option, yes, to provide water for tribal members if they
8 wanted to go there, yes.

9 Q If activities from this mine contaminated the groundwater in
10 that area, would the tribe be likely to sink a well?

11 A No.

12 Q What impact would a change in the groundwater there -- a
13 negative change have on the tribe's use of that 40-acre
14 parcel, if you know?

15 A Well, as Jason testified, the river is close there. Of
16 course, that would impact the fishing there. And it
17 probably would impact the fishing all the way to Lake
18 Superior and Lake Superior itself.

19 Q What about tribal just casual use of that 40? Drinking
20 water from the tributary, would that be affected?

21 A Correct; yes, it would.

22 Q In what way?

23 A I would believe that it would be contaminated. We would not
24 be able to drink it.

25 Q If the proposed mine is approved, will members of the

1 community continue to use the area in the vicinity of the
2 mine for hunting, fishing, gathering?

3 A I would have to say that they would not. I would believe
4 that the entire area would be contaminated. If that would
5 happen, certainly that will threaten the survival of our
6 people.

7 Q Will tribal members continue to use Eagle Rock if this mine
8 project is there?

9 A Most definitely not. I don't believe that, once the
10 drilling and the blasting started on Eagle Rock, that there
11 will even be a rock left. And on top of it, I understand
12 that it's going to be fenced off for 42 years.

13 Q That Eagle Rock in accordance with their current plan is
14 going to fenced off?

15 A Correct.

16 Q What is the tribe's -- or the community's position vis-a-vis
17 this mine, please?

18 A The tribal council has been opposed to this proposed mine
19 since July 2004 when they passed a resolution stating that
20 we did not believe that the short-term gain of this mine was
21 worth the environmental contamination or the risks to human
22 health, and it deeply offended our traditional and spiritual
23 beliefs.

24 MR. EGGAN: Thank you. I have nothing else.

25 MR. HAYNES: No questions.

CROSS-EXAMINATION

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BY MS. LINDSEY:

Q Can you tell us the first time that you went to Eagle Rock to pray?

A I was there a few years after 2004, maybe in '05 and '06 I've been in there, also in 2007, last year.

Q So you didn't visit it before you learned of the mine project?

A We did visit it. My mother, at that time, when I was just little, she would visit. I'm not totally sure, you know, that --

MS. LINDSEY: I have nothing further.

MR. REICHEL: I have no questions.

MR. EGGAN: Just a question to follow up on a question asked by Ms. Lindsey.

REDIRECT EXAMINATION

BY MR. EGGAN:

Q If someone were to suggest that members of the tribe are making up their view of Eagle Rock as a religious site to foster this lawsuit, what would your -- what would you say to that?

A That they were making it up?

Q Is the tribe making up this idea of spiritual use of Eagle Rock just to have standing in this lawsuit?

A No, they are not.

1 Q Why -- explain your view on that.

2 A We have actual written documentation that can prove that.

3 Q Can prove what?

4 A That people have been visiting the rock and worshipping
5 there.

6 Q For how long?

7 A For hundreds of years.

8 MR. EGGAN: I have nothing further.

9 MS. LINDSEY: Nothing further.

10 MR. REICHEL: No questions.

11 MR. EGGAN: Thank you, Ms. LaFernier. Thank you
12 very much.

13 JUDGE PATTERSON: Thank you, ma'am.

14 MR. GRAVES: Your Honor, call Dale Goodreau to the
15 stand.

16 REPORTER: Do you solemnly swear or affirm the
17 testimony you're about to give will be the whole truth?

18 MR. GOODREAU: Yes.

19 DALE GOODREAU

20 having been called by the Petitioners and sworn:

21 DIRECT EXAMINATION

22 BY MR. EGGAN:

23 Q Mr. Goodreau, can you give your full name for the record and
24 spell your last name for us, please?

25 A Dale Frances Goodreau, G-o-o-d-r-e-a-u.

- 1 Q And where do you live, sir?
- 2 A Baraga.
- 3 Q Are you a member of the Keweenaw Bay Indian Community?
- 4 A Yes, I am.
- 5 Q What do you do for a living there?
- 6 A I'm a sergeant with Keweenaw Bay Conservation Department.
- 7 Q And how long have you been a conservation officer at
- 8 Keweenaw Bay Indian Community?
- 9 A This will be my eleventh year.
- 10 Q What are your duties in that job?
- 11 A To protect the natural resources of the Keweenaw Bay Indian
- 12 Community.
- 13 Q How many tribal conservation officers does the tribe have?
- 14 A Including myself, four.
- 15 Q And what is your patrol area?
- 16 A We patrol Ontonagon, Baraga, Keweenaw, Houghton, Marquette
- 17 Counties.
- 18 Q Does your patrol area consist of the area that we've been
- 19 talking about the so-called ceded territories?
- 20 A Yes, it does.
- 21 Q Can you tell the Hearing Officer what your understanding is
- 22 of the ceded territories?
- 23 A Ceded territories are usual and custom hunting, fishing and
- 24 gathering areas.
- 25 Q And are they -- are they in the counties that you've just

1 described?

2 A Yes, they are.

3 Q Okay. Are you familiar with the so-call Kennecott Eagle
4 Mine project that is proposed for the area in Marquette
5 County?

6 A Yes, I am.

7 Q Do you know where the mine area is?

8 A Yes.

9 Q Are you familiar with a structure as -- a natural structure
10 known as Eagle Rock?

11 A Yes.

12 Q Is Eagle Rock and the area surrounding Eagle Rock within the
13 ceded territory?

14 A Yes, it is.

15 Q Okay. And your patrol area consists of at least that part
16 of Marquette County?

17 A Yes.

18 Q How often do you think you're in the vicinity of Eagle Rock
19 as part of your duties as a conservation officer?

20 A Depending on the time of year, we try to get through there
21 at least once a week, but at least once a month we go
22 through.

23 Q I want to ask you some questions about observations that you
24 made as a conservation officer. Have you observed members
25 of the Keweenaw Bay Indian Community exercising their treaty

- 1 rights; that is, to hunt, fish and gather in that vicinity?
- 2 A Yes, I have.
- 3 Q In the vicinity of Eagle Rock?
- 4 A Yes.
- 5 Q What specifically have you seen them doing?
- 6 A Gathering berries, gathering medicines.
- 7 Q Anything else? Hunting, fishing?
- 8 A Hunting. They've hunted through there.
- 9 Q Okay. How often do you see people exercising those rights?
- 10 A Most of the time I go through there somebody is around.
- 11 Q okay. How recently?
- 12 A I haven't been out there yet this year because of the
13 weather. Last fall.
- 14 Q Okay. During the tradition of deer hunting season?
- 15 A Yes.
- 16 Q I didn't ask you how long you've been a member of the
17 conservation corps at the Keweenaw Bay. How many years have
18 you been the conservation officer?
- 19 A My eleventh year.
- 20 Q Eleventh year. Okay. Have you seen people exercising those
21 rights during that entire 11-year period?
- 22 A Yes.
- 23 Q How about you personally? Have you personally exercised
24 your treaty rights in the ceded territories?
- 25 A Yes, I have.

1 Q In the vicinity of Eagle Rock?

2 A Yes.

3 Q What specifically have you done?

4 A I've help gather medicines, picked blueberries, hunting
5 occasionally through there.

6 Q Have you participated in any activities related to fishing
7 in the area of the proposed Kennecott Mine project?

8 A Not personally have not fished.

9 Q Is there a -- is there a fish hatchery somewhere in the
10 vicinity of the mine?

11 A Fish hatchery?

12 Q Yes. The Coaster Brook?

13 A Coaster Brook trout?

14 Q Yes.

15 A They have a natural habitat in the Salmon Trout.

16 Q When you and I were talking -- I think it was yesterday we
17 talked about a fish hatchery that you had observed. And
18 maybe I'm wrong. Maybe it wasn't the Coaster Brook.

19 A We raise Coaster Brook trout.

20 Q The tribe does?

21 A The tribe does.

22 Q Okay. Where do you do that?

23 A We do that on the reservation of Keweenaw.

24 Q I see. Okay. So that really is not in the vicinity of the
25 Keweenaw --

1 A No.

2 Q -- or the Kennecott Mine? Okay. Now, let me ask you a
3 question about the spiritual use of Eagle Rock itself. Have
4 you seen members of the community utilizing Eagle Rock for
5 spiritual purposes?

6 A Yes, I have.

7 Q Do you know -- you know what a church is. How does Eagle
8 Rock compare to a church or something that we might
9 understand?

10 A It's the same thing. It's a spiritual gathering area.

11 Q Would you mind discussing your own practices at Eagle Rock
12 and what you personally have done at Eagle Rock?

13 A When we first come in, we'll have a song and drum, and we
14 light a fire. We feed the spirits. We'll smudge and we'll
15 take --

16 Q When you say you'll "smudge," what does that mean?

17 A We take the smoke -- tobacco and we each and take smudge,
18 purify our bodies and our souls and our spirit. And then
19 we'll take an offering of tobacco tied in red and bring it
20 up. And wherever we sit to pray, we'll tie that above us,
21 offer that to the spirits. And then we'll pray, meditate.
22 Things come to us.

23 Q How often do you use Eagle Rock for this purpose?

24 A Once a year.

25 Q Have you seen others utilizing Eagle Rock -- others within

1 the Keweenaw Bay Indian Community utilizing Eagle Rock for
2 this purpose?

3 A Yes.

4 Q How often?

5 A They'll use it at least three times a year that I've
6 noticed.

7 Q If there were a mining operation in the vicinity of Eagle
8 Rock, would you utilize Eagle Rock for spiritual purposes?

9 A No.

10 Q Why not?

11 A It'd be fenced off. It'd probably kill the spirits there.

12 Q If the groundwater in the vicinity of Eagle Rock were
13 degraded, would there be any change in your use of the area?

14 A Yes.

15 Q In what way?

16 A Would be able to go fish in them streams that are abundant
17 with fish that some of the others use, drinking water.
18 Because we stop there and get a drink every so often.

19 MR. EGGAN: I don't think I have any other
20 questions.

21 MR. HAYNES: No questions.

22 CROSS-EXAMINATION

23 BY MS. LINDSEY:

24 Q You've talked about hunting, that you occasionally hunt in
25 the vicinity of the mine site -- proposed mine site; is that

1 right?

2 A Yes, ma'am.

3 Q You hunt elsewhere in the ceded territories as well?

4 A Yes, ma'am.

5 Q Can the same be said for fishing and gathering?

6 A Yes, ma'am.

7 Q Okay. So you can -- you do the fishing and gathering in
8 areas outside of just that mine site. You do it throughout
9 the ceded territories?

10 A Yes, ma'am.

11 MS. LINDSEY: Thank you. I have nothing further.

12 CROSS-EXAMINATION

13 BY MR. REICHEL:

14 Q Mr. Goodreau, just so the record is clear, there's not a
15 building at Eagle Rock, is there?

16 A No, sir.

17 Q So the practices that you described, the spiritual
18 practices, do not occur inside a building, do they?

19 A No, sir.

20 MR. REICHEL: Nothing further.

21 MR. EGGAN: Nothing further, your Honor.

22 JUDGE PATTERSON: Thank you, sir.

23 MR. EGGAN: Thank you, Mr. Goodreau.

24 MR. HAYNES: Your Honor, I hesitate to say that we

25 have no more witnesses for today through a scheduling --

1 JUDGE PATTERSON: Okay. That's fine.

2 MR. HAYNES: And I think perhaps off the record if
3 we could confer with counsel about actually tomorrow because
4 of travel times for some of our other witnesses who we plan
5 to call on Wednesday?

6 JUDGE PATTERSON: So what you're saying is we're
7 done for today?

8 MR. HAYNES: I think so, yes.

9 JUDGE PATTERSON: Okay. That's good. That'll
10 give me a chance to read the motions. We can go off the
11 record. Do you want to discuss it off the record?

12 MR. HAYNES: I'd like to.

13 JUDGE PATTERSON: Okay. Close the record for the
14 day.

15 (Hearing adjourned at 3:41 p.m.)

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Transcript Volume VIII

1 STATE OF MICHIGAN

2 STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

3 In the matter of: File Nos.: GW1810162 and
MP 01 2007

4 The Petitions of the Keweenaw
5 Bay Indian Community, Huron
6 Mountain Club, National
7 Wildlife Federation, and
8 Yellow Dog Watershed
Environmental Preserve, Inc.,
on permits issued to Kennecott
Eagle Minerals Company. /

9 Agency: Department of
Environmental
Quality

10 Case Type: Water Bureau
and Office of
11 Geological
Survey

12 D R A F T T R A N S C R I P T

13 HEARING - VOLUME NO. VIII

14 BEFORE RICHARD A. PATTERSON, ADMINISTRATIVE LAW JUDGE
15 Constitution Hall, 525 West Allegan, Lansing, Michigan
16 Wednesday, May 7, 2008, 8:30 a.m.

17
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NOTE: Page numbers may change on final transcript.

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NOTE: Page numbers may change on final transcript.
Full exhibit list for today will be included in the final
transcript.

1 Lansing, Michigan

2 Wednesday, May 7, 2008 - 8:40 a.m.

3 MR. DYKEMA: Your Honor, we have one unfinished
4 piece of housekeeping from Dr. Flaspohler.

5 JUDGE PATTERSON: Okay.

6 MR. DYKEMA: I offered yesterday the demonstrative
7 exhibits that we used with Dr. Flaspohler. Because I didn't
8 use all the slides, I took a few out, and I wanted to give
9 counsel some time to look at them before they responded to
10 my tender.

11 JUDGE PATTERSON: Right.

12 MR. DYKEMA: The demonstratives have been marked
13 as Petitioners 143. And I ask that they be admitted for
14 purely demonstrative purposes.

15 MR. PREDKO: You said purely demonstrative?

16 MR. DYKEMA: That's correct. Solely to illuminate
17 the transcript.

18 MR. PREDKO: With that stipulation, your Honor, I
19 don't believe that Intervenor has an objection. I just
20 would restate that the objection, to be clear for the
21 record, that I made yesterday with respect to there's a
22 letter in here from another expert and we would object to
23 that coming in as substantive evidence. But again to the
24 extent it's all demonstrative, used to illuminate testimony,
25 no objection.

1 JUDGE PATTERSON: Okay.

2 MR. REICHEL: That's the Respondent's position as
3 well. In other words, no objection to demonstrative
4 purposes.

5 MR. DYKEMA: Thank you, your Honor.

6 (Petitioner's 632-145 received)

7 MS. HALLEY: Petitioners call Jerry Lee Curtis.

8 REPORTER: Do you solemnly swear or affirm the
9 testimony you're about to give will be the truth?

10 MR. CURTIS: Yes, I do.

11 JERRY LEE CURTIS

12 having been called by the Petitioners and sworn:

13 DIRECT EXAMINATION

14 BY MS. HALLEY:

15 Q Would you state your name for the record spelling your last
16 name?

17 A Jerry Lee Curtis, C-u-r-t-i-s.

18 Q Thank you.

19 JUDGE PATTERSON: Is Jerry with a J or a G?

20 THE WITNESS: J.

21 JUDGE PATTERSON: J. Okay. Thank you.

22 Q Mr. Curtis, what is your educational background?

23 A Associate's degree in social work, counseling, certified
24 addictions counselor, certified drug and alcohol counselor.

25 Q What is your occupation?

1 A I'm the administrator for Keweenaw Bay Indian Community
2 substance abuse programs.

3 Q And where do you live?

4 A Baraga, Michigan.

5 Q Are you a member of the Keweenaw Bay Indian Community?

6 A Yes, I am, enrollment number 180.

7 Q How long have you been a member?

8 A Lifetime.

9 Q Do you hold an office for KBIC?

10 A Yes, I do. I'm a present council member, second year my
11 first term.

12 Q Council meaning the tribal council?

13 A Tribal council, Keweenaw Bay Tribal Government.

14 Q And what do you do in your role as a member of the tribal
15 council?

16 A First and foremost look out for the welfare and the general
17 well-being of the community.

18 Q Do you consider yourself part of the Anishinaabe Nation?

19 A Yes, I do.

20 Q Could you describe to the Court what the word "Anishinaabe"
21 means to you?

22 A To me, that's the first people, the original, the
23 Anishinaabe. Anishinaabe is the plural, the original.

24 Q And what lifestyle does it mean to be -- what lifestyle
25 decisions do you make based on being Anishinaabe?

1 A Try to lead a -- set a good example for the young, for the
2 youth, walk -- we call it the Red Road, some of us, walking
3 the straight and narrow.

4 Q What does that mean?

5 A For me, it was -- I'm a recovering alcoholic. I've been in
6 recovery for 15 years plus. And, to me, that's probably one
7 of the biggest contributions I can make is being sober and
8 being a good example for the youth of our community and
9 following some of our traditions, if not all of them.

10 Q Which traditions do you follow?

11 A I sing and drum. It's a group -- our drum is call the Four
12 Thunders. We work with the youth and we teach the youth.
13 Sweat lodges, we participate in, different pipe ceremonies,
14 healing ceremonies.

15 Q What's the purpose of those ceremonies?

16 A It depends on which one you want.

17 Q Could you just walk us through each one and briefly tell us
18 what --

19 A Sweat lodge -- sometimes it can be a healing lodge. You go
20 in to purify yourself like getting a new beginning, probably
21 equated to maybe a baptismal is the Western concept of it.
22 Pipe ceremony, that could be -- that's praying. It would
23 depend on -- it could be a naming ceremony, it could be a
24 funeral, a walking on ceremony, traveling ceremony. There's
25 an abundance of different things that we do with the

1 tobacco.

2 Q So it sounds like your life is marked by these ceremonies?

3 A I would say indirectly as -- prior to my coming into
4 recovery, I knew enough to stay away from that thing. It's
5 quite disrespectful when you're using and under the
6 influence. And once I started my road in recovery, that's
7 when I kind of really focused on my tradition and my
8 culture.

9 Q Mr. Curtis, have you ever been to the Yellow Dog Plains?

10 A Yes, I have.

11 Q Could you describe the Yellow Dog Plains for us?

12 A Well, it's a hunting and gathering place that I've been
13 going to since I was a child. Mainly hunting for me,
14 fishing up in that area from the Big Huron all the way
15 through the Triple A Road out to West Branch.
16 Blueberries -- I know my family picks blueberries there.
17 It's a pristine place, a lot of nature. My brothers and
18 sisters are the animals.

19 Q If we were standing on the plains right now, what do you
20 think we would hear?

21 A An abundance of animals, nature, birds, waterfalls.

22 Q Do you see a lot of traffic when you're out on the Yellow
23 Dog Plains?

24 A Not really. Once in awhile I'll run in to another
25 four-wheel drive or something, maybe a logging truck; not a

1 whole lot of traffic.

2 MS. HALLEY: DEQ Exhibit 31.

3 Q Have you been to a place called Eagle Rock?

4 A Yes, I have.

5 Q Could you locate Eagle Rock for us on this map? This is
6 from DEQ Exhibit 31. It's figure 4.2 -- or 4-2. Excuse me.

7 A Right there (indicating).

8 Q That's Eagle Rock right there?

9 A Yes, it is.

10 Q Okay. What is that orange line through it?

11 A I believe that's the proposed tunneling, I think.

12 MS. HALLEY: Could you put up number 11 -- slide
13 11?

14 Q This is Petitioner's Exhibit 11, slide 11, which is already
15 admitted. What is this a picture of, Mr. Curtis?

16 A Eagle Rock.

17 Q And you've been to Eagle Rock?

18 A Yes, I have.

19 Q Okay. Is Eagle Rock important to the Anishinaabe people?

20 A I believe it is.

21 Q Why is that?

22 A Sacred grounds. By way of sacred grounds, I would say our
23 ancestors going back probably to time immemorial.

24 Q Doing what there?

25 A Praying, having different ceremonies there.

1 Q Could you describe what you know about the history of Eagle
2 Rock?

3 A As far as I know, it's -- the connection that I have
4 personally is the cultural. It's been passed on through the
5 generations. It's just the overall sacredness. To me it's
6 like a -- part of Grandmother -- Grandmother Earth.

7 Q How often do you go there?

8 A A couple times a year, three times a year for specific
9 reasons. If I go hunting, then I'll make it a point to stop
10 there and go lay my tobacco down and sit there awhile and do
11 some praying.

12 Q What do you mean by "lay your tobacco down"?

13 A That's the way our prayers are carried up to the creator.

14 Q And when you're there at Eagle Rock praying, what is it
15 like?

16 A Oh, a connectiveness. I can't explain it. I'm trying to
17 think of an example. Just hitting that area probably, just
18 coming in that -- I think coming around that second big
19 corner, if you're traveling back to Skanee area, the Big
20 Eric's Bridge, it's kind of like -- it gives me goose bumps,
21 so to speak. It's like there's a connectiveness there
22 that's always been there. It's kind of like when I drove
23 through the Dakotas and they said to me, "You're going to
24 feel something when you hit the Badlands." And that's
25 probably similar to what I felt.

1 Q What do you think that "something" is?

2 A The spirits, my ancestors.

3 Q Is it noisy at Eagle Rock when you've been there in the

4 past?

5 A No.

6 Q Do you see animals?

7 A I've seen deer, I've seen a couple wolves, coyotes, martins,

8 pine martins.

9 Q Do you see unique plants?

10 A I see -- there's plants, but I can't identify some of them.

11 But there is vegetation there.

12 Q Okay. And when you go to Eagle Rock to pray, do you see

13 other people?

14 A What do you mean?

15 Q I mean, do you usually see other visitors, other human

16 visitors at Eagle Rock?

17 A The last two times I've seen -- I think -- I don't know if

18 it was part of Kennecott or somebody was doing a survey or

19 doing something up there on the rock when we walked upon.

20 And then another time there was -- our TPHO officer was up

21 there.

22 Q Your what?

23 A TPO officer.

24 Q Okay. Can you state for the record what "TPHO" means?

25 A It's Tribal Preservation Historical Officer.

1 Q Okay. Thank you. Before that, the last two visits, did you
2 normally see people there?

3 A Not really, not when I've -- I've seen a passerby maybe -- I
4 think twice there was two cars that went by. But I
5 haven't --

6 Q Is solitude part of the reason you go to Eagle Rock?

7 A Without seeking that, yes. Because it's -- usually when
8 I've been there, that's what it is. You know, it's very
9 quiet around there.

10 Q You described some of the ceremonies that you do in your
11 daily life before. Could you describe any ceremonies that
12 you do at Eagle Rock?

13 A I've smoked the pipe up there.

14 Q And what is the significance of smoking the pipe?

15 A It would be an honor in letting our asema go up to our --
16 our prayers are being carried through that pipe through the
17 asema up to the creator.

18 Q What is asema?

19 A Tobacco. Excuse me.

20 Q Thank you. Okay. And what other ceremonies might you do at
21 Eagle Rock or have you done?

22 A I haven't done any. But I've heard of a sweat lodge being
23 put up there and a couple of neighboring tribal members have
24 done a sweat up there.

25 Q But you go there and pray?

1 A Right. That's my mainstay for that is praying.

2 Q Okay. There's been some talk about leaving the top of Eagle
3 Rock undisturbed but carrying out the mining activities in
4 it and around it. If that were the case, would you still go
5 to Eagle Rock to pray?

6 A Not if it was illegal, if it's fenced off, so to speak. And
7 that's my understanding that's what it's going to be is
8 inaccessible. And to me that's going against what I believe
9 in.

10 MS. HALLEY: Could you put the map back up?

11 Q This is figure 4.2 again that we looked at a few moments
12 ago. Do you see that gray outline sort of around the
13 perimeter there? Could you outline that for us, please?

14 A Uh-huh (affirmative).

15 Q It's a little hard to see but -- yeah, that looks like it.

16 A Uh-huh (affirmative).

17 Q Okay. Does it look to you like Eagle Rock is inside or
18 outside that fence line?

19 A It's inside of it. It's right there.

20 MS. HALLEY: Could you pull the page 5? This is
21 Petitioner's Exhibit 118, page 5.

22 Q Mr. Curtis, could you read provision number 10? This is the
23 permit as it was issued to the company. This is page 5 of
24 the special conditions. Would you read number 10, please?

25 A "The permittee shall construct and maintain an 8-foot high

1 chain link fence surrounding the surface facilities as
2 detailed in Figure 4-2 of the permit application."

3 MS. HALLEY: Okay. Could you go back to the
4 Figure 4-2?

5 Q So this is Figure 4-2 that was just referenced in the
6 permit. And you outlined the fence for us. Is it your
7 understanding that Eagle Rock would indeed be fenced off?

8 A Yeah, that's what I believe.

9 Q And you testified that you would not go to Eagle Rock if it
10 were illegal to do so?

11 A Right.

12 Q So does that mean that you would be precluded from using
13 this as you described it, sacred site?

14 A Yes, it will.

15 Q Let's assume for a moment that you could legally access
16 Eagle Rock and that the mining were going on. Okay. You're
17 aware that the orange line, as you described it, signifies a
18 tunnel through Eagle Rock; is that correct?

19 MS. LINDSEY: Objection. Foundation. Tunnel
20 through Eagle Rock? I'm going to object to the foundation
21 of this witness testifying as to that.

22 Q Mr. Curtis, what is your understanding of the orange line on
23 this map?

24 A It's desecrating -- to me it's desecrating the sacred
25 ground, drilling right through it. Whether it's top, bottom

1 middle, it's still desecration.

2 Q Would it affect your ability to use Eagle Rock as a sacred
3 site?

4 A It wouldn't affect me. It would affect my ancestors, the
5 spiritual connection.

6 Q How so?

7 A It would be like -- with all due respect, I'm trying to give
8 you an example -- going to another -- like a burial grounds
9 of a cemetery, maybe digging holes or boring through a
10 public cemetery. You don't see that too often. I haven't
11 seen that ever. And that's what I would liken that to,
12 total disrespect and desecration of sacred grounds.

13 Q Sacred grounds that your ancestors used?

14 A Right.

15 Q Could you just go someplace else and pray?

16 A I could. But why should I?

17 Q Could you have the same experience someplace else that you
18 have at Eagle Rock?

19 A Not really. I don't think I'd have that same
20 connectiveness.

21 Q Why not?

22 A Because of the disturbance that they're going to my
23 ancestors.

24 Q What I'm wondering is if you could go to another place to
25 pray and have the same experience that you have had at Eagle

1 Rock in the past?

2 A I don't think so.

3 Q Why not?

4 A It would be like -- it would be like asking the Sioux, who
5 are in the Black Hills, to put them over somewhere else and
6 say, "Go have your ceremony. Go over there." And there's
7 just not that connectiveness there.

8 MS. LINDSEY: Your Honor, I'm at this time going
9 to renew our motion to exclude. As I understood their
10 representation and the testimony of these witnesses, it was
11 going to be to establish standing and to say that they have
12 standing to bring this suit because they use that area. As
13 all of this testimony is coming in now, I understand that it
14 sounds to me like they're trying to say that this is a
15 reason to deny the permit. And as we had raised in the
16 motion to exclude that we filed two months ago, we said that
17 whether this is used for spiritual purposes or cultural
18 resources, this was not part of the decisional criteria for
19 Part 632 or Part 31. And it now sounds to me like the
20 testimony that they're attempting to elicit is that this is
21 a reason for denying the permit. So if -- I can go into the
22 reasons. But if you remember the motion --

23 JUDGE PATTERSON: I do remember the motion.

24 MS. LINDSEY: Okay.

25 JUDGE PATTERSON: Ms. Halley?

1 MS. HALLEY: Your Honor, the Rules and
2 specifically Rules 425.202(2)(p) clearly indicates

3 JUDGE PATTERSON: Is that 202?

4 MS. HALLEY: Uh-huh (affirmative). 202(2)(p).

5 JUDGE PATTERSON: Okay. I got two sub what?

6 MS. HALLEY: (p).

7 JUDGE PATTERSON: (p).

8 MS. HALLEY: Which includes a list of things that
9 the applicant was supposed to include in their environmental
10 impact assessment analysis. And one of the things in (p) is
11 places of worship.

12 JUDGE PATTERSON: I'm still looking for that. Sub
13 (2)(p)?

14 MS. HALLEY: Yes. The numbering in that section
15 is --

16 JUDGE PATTERSON: Yeah. It's confusing.

17 MS. HALLEY: It is. On my version, it's page 23.
18 If we have the same version, that might help.

19 JUDGE PATTERSON: Okay. I've got it.

20 MS. HALLEY: Okay. So places of worship is one of
21 the items listed in (p). And this testimony is imminently
22 relevant to (p).

23 MS. LINDSEY: And, your Honor, this was the basis
24 of the motion that we brought specifically addressing and
25 setting for the legal arguments as to why Eagle Rock does

1 not fit within places of worship under the requirements of
2 the EIA. We specifically raised this issue. And the
3 reasons that we got was that we weren't going to put these
4 witnesses on for anything other than standing.

5 MS. HALLEY: No. The issue that was briefed and
6 discussed was the issue of EE. If you look further down
7 that page, your Honor, you'll see cultural, historical or
8 archeological resources.

9 JUDGE PATTERSON: Right.

10 MS. HALLEY: And even on that issue it was only
11 Mr. Eggan that stipulated under Part 31 only to calling
12 these witnesses only for standing. Mr. Haynes nor I have
13 ever stipulated to anything like that.

14 MS. LINDSEY: Okay. Well, my understanding of the
15 Part 632 response was -- this is what they said.
16 "Kennecott's argument is beside the point. Petitioners
17 intend to call witnesses from the Keweenaw Bay Indian
18 Community not for the purposes of establishing that any
19 portion of the mining area is listed on a register but
20 rather to establish standing."
21 They did represent. And further, --

22 MS. HALLEY: Your Honor --

23 MS. LINDSEY: -- if I may, they said that none of
24 the witnesses identified by Petitioners will seek to assert
25 new claims. And I think that perhaps they were trying a

1 little too hard to be cute and distinguishing this without.
2 But the point is we raised the issue that whether you want
3 to do (p) or whatever you want to go under, that we raised
4 the issue of not going beyond standing with these witnesses.
5 And specifically the reason we raised it two months ago was
6 because we did not understand this to be part of the 632
7 petition, part 31 petition, and we specifically raised it
8 because, if we were going to have these issues two months
9 ago as part of this case, we certainly needed to know that.
10 We relied on the representation that there was nothing new
11 being raised. And now they're going under a specific --
12 "Well, we didn't address your legal arguments at all, but we
13 said they would be represented -- brought in only for
14 standing." And now we've prepared our case and gone
15 forward. And we're in the middle -- two weeks into trial
16 we're hearing that, "No, actually we want to get into
17 whether this is a place of worship," which was specifically
18 argued and addressed in our motion.

19 MS. HALLEY: Your Honor, we are not asserting that
20 any of these locations are listed on any register, which is
21 what that motion addressed. We're not making that assertion
22 at all. These witnesses are not testifying about any
23 listing, nothing of the sort. They are testifying about
24 their personal use of this site. And for the Defendants
25 here to claim that this is somehow new information to them

1 is ridiculous. Our comments included a report about the
2 significance of Eagle Rock. The DEQ has, in fact -- and the
3 DNR have both held consultations with members and
4 representatives and of KBIC on this very issue. In fact, I
5 don't think Mr. Curtis himself testified at the hearings in
6 Marquette. But certainly tribal members have testified over
7 and over again about the religious significance of Eagle
8 Rock and the plains to them. This is in no way new
9 information.

10 MR. EGGAN: Absolutely not, your Honor. Can I can
11 just interject. I may have contribution to the confusion
12 here, because I did speak to Mr. Kohl shortly after their
13 motion to exclude was filed. And I made it clear to him
14 that I would be calling witnesses from the tribe that would
15 be testifying on standing issues. But I made it absolutely
16 clear to him at the time that there would be -- that the
17 Part 632 folks would be calling some witnesses from the
18 tribe to testify about what I called at the time the worship
19 issue. And so Kennecott is not surprised by this issue. We
20 have discussed it.

21 And furthermore, I think the record should be
22 clear that we did what we said we were going to do. We
23 called witnesses on the Part 31 side. And it should be no
24 surprise to anybody that we had this other segment of
25 witnesses that we talked about with Kennecott and who are

1 here now testifying. This is not a surprise issue. And
2 nobody is trying to be cute with this at all. It's an
3 important part of the 632 case.

4 MS. HALLEY: Your Honor, I might point out that
5 the previous tribal witnesses also testified about the
6 religious significance of Eagle Rock with no objection.

7 MR. REICHEL: Judge, I'd like to be heard on this.
8 Because leaving aside any claim of surprise or lack thereof,
9 I think, if this testimony is being proffered on the
10 proposition that it's relevant to the Petitioners'
11 challenger that the environmental impacts -- first of all,
12 this Rules deals with the prescribed contents of the
13 environmental impact statement. Counsel has suggested that
14 this testimony is relevant to whether or not the
15 environmental impact statement addressed this particular
16 requirement in (2)(p) of the Rule. I submit that it is
17 not, given the plain language of the Rule, relevant. If
18 your Honor looks at the text of the Rule, which I'm quoting
19 here, "Residential dwellings, places of business, places of
20 worship, schools, hospitals, government buildings or other
21 buildings used for human occupancy all or part of the year."
22 Reading the text of this Rule as a whole, particularly the
23 last clause, on its face it's clear -- what it contemplates
24 is that that EIA was required to address the existence and
25 the potential impact on buildings of the various kinds that

1 are used for human occupancy for all of part of the year.
2 It is manifest and indeed one of the previous witnesses
3 testified that Eagle Rock is not a building. The activities
4 that have been described by the witness do not occur in a
5 building. So as a purely legal matter, if the claimed
6 relevance of this testimony is under (p), I don't think it
7 applies to (p).

8 MS. LINDSEY: Thank you, Mr. Reichel. And we --
9 that was going to be my other thing. Wholly apart from
10 whether this comes as a surprise is the legal argument which
11 we did brief as well. This is something we briefed and they
12 chose not to address the legal argument on when we briefed
13 it. And I would just also like to say that, on the Part 632
14 witness list, I don't believe any of these witnesses are
15 listed on Part 632. And as I understand --

16 MS. HALLEY: No. But we did reference the
17 witnesses on the other lists by incorporation.

18 MR. EGGAN: And I placed a special phone call --
19 again, nobody is trying to be cute, Counsel. But I placed a
20 call to one of the partners in your firm, Steven Kohl, and I
21 informed him of the issue the day that we did it so that it
22 would be absolutely clear.

23 MS. LINDSEY: I understand. And we rest of the
24 legal argument that we made two months ago which is that
25 this is not relevant and not part of the decisional criteria

1 and wasn't required to be in -- considered under the EIA
2 part P -- excuse me -- Part 425.202(p) because it is not a
3 place of worship. And we did not respond to that argument.
4 And legally I don't think there is a response.

5 MS. HALLEY: Your Honor, that particular issue has
6 not been briefed. It clearly has not. And nothing could be
7 more relevant to whether the EIA is complete than these
8 witnesses' testimony about whether or not this is a place of
9 worship for them. They are going to be excluded from this
10 site. That is the issue here, your Honor. And furthermore
11 in anticipation of this building argument, over the weekend
12 I looked up the definition of "place of worship" in the
13 dictionary. It is not defined in the Rules. It's not
14 defined in the statute. If you look up "place" in the
15 dictionary, the first definition is simply "open space."
16 There is nothing about a room, a building or anything of the
17 sort.

18 MR. REICHEL: Your Honor, may I respond?

19 JUDGE PATTERSON: Go ahead. I'm sorry, Counsel.
20 You were finished?

21 MS. HALLEY: And to assert that a place of worship
22 has to be a building flies in the face of the very
23 definition of religion in this case. These witnesses could
24 and will testify, if they need to, that actually their
25 primary place of worship is outdoors.

1 MR. REICHEL: Your Honor, if I may respond
2 further?

3 JUDGE PATTERSON: Sure.

4 MR. REICHEL: My argument is not that a place
5 of -- that people cannot and do not worship outdoors.
6 That's not the point. I'm simply making the legal argument
7 which is, for this testimony to be relevant, it has to
8 relate to some decisional criteria under Part 632 or the
9 Rules. And the only claimed relevance is under this (p).
10 And I submit, if you read this Rule applying recognized
11 principles of statutory construction, which apply to Rules,
12 looking at the text as a whole, I submit that it is clear in
13 the context of the entire Rule that what the Rule is
14 addressing is, in fact, as a class are buildings used for
15 human occupancy all or part of the year.

16 MS. HALLEY: Your Honor, the Rule also includes
17 the term "places of business." Certainly Mr. Reichel
18 wouldn't assert that the only place to do business is in a
19 building.

20 MR. REICHEL: That's not my -- I'm sorry. That's
21 not my contention. I'm not saying that the only place to do
22 business is in a building or the only place to worship is in
23 a building. I'm saying you read the text of Rule that lists
24 things all of which in the context of the Rule are intended
25 to be buildings.

1 MS. LINDSEY: And if I just may respond for a
2 moment to the argument that this was not briefed. I can
3 hand you our brief, your Honor. We specifically as part B
4 addressed this issue and had pages of argument on this. And
5 so to say it's not briefed, I mean, this was -- we
6 specifically quoted that Rule for the places of worship and
7 very much did address this issue in our brief.

8 MS. HALLEY: Your Honor, may I also suggest that
9 this set of testimony is relevant to (x), land uses and land
10 access, current and historic land use trends. These are
11 all -- this is all relevant.

12 JUDGE PATTERSON: Okay. Here's what I'm going to
13 do. I'm going to let the testimony stand. What we've
14 gotten down to is a legal argument. Whether or not it's
15 applicable to the criteria 632, that can be addressed later.
16 But, I mean, Mr. Curtis is here. He's made the effort to
17 come here.

18 MS. HALLEY: Indeed.

19 JUDGE PATTERSON: Complete his testimony. There
20 is standing testimony regarding the religious use of Eagle
21 Rock. I'll let that -- I'll let the testimony stand. We
22 can argue later whether it's relevant to criteria 632.

23 MS. HALLEY: Thank you, your Honor.

24 MS. LINDSEY: Thank you, your Honor. Could you
25 just note a continuing objection so I don't have to --

1 JUDGE PATTERSON: Sure; yeah.

2 MR. REICHEL: And the same objection on behalf of
3 the Department.

4 JUDGE PATTERSON: All right.

5 Q Sorry for that interruption, Mr. Curtis. I believe that we
6 were talking about the tunnel. And I believe that my next
7 question was going to be whether the tunnel in some way
8 affects -- would affect your ability or desire to use Eagle
9 Rock as the sacred site that it has been used as?

10 A Yeah. As I explained when I tried to give you an example --
11 or the example of what that's like to me. It would be like
12 me and tell my family, "Come on. Let's go down to the
13 public cemetery here and let's dig some trenches through or
14 around or under," however you want to call it, which is
15 total disrespect and, you know -- and to me limiting my
16 access to that is -- it goes our Native American Religious
17 Freedom Act, too, of 1978. It specifically states in that
18 Act that we shall not be limited to access to sacred sites.
19 And that totally contradicts what that Act stands for -- the
20 intent of that whole Act.

21 Q And the intent of that Act, as you understand it, is to
22 provide you with what?

23 A Freedom; freedom of religion, freedom to express and
24 practice where we feel it's any sacred ground.

25 Q What does the phrase "place of worship" mean to you?

1 A On a personal note, I don't like to use the word "worship"
2 in our -- as a Native American. To me that's a Western
3 concept. And I practice my culture. I may pray. I sing.
4 I talk to the creator. In some other light, that might be
5 worshipping. But on a personal note again, I don't consider
6 that worship. To me it's -- that's just a part of being
7 Anishinaabe. I stay away from the -- most of the Western
8 concepts, because they tend to contradict with the Native --
9 what Anishinaabe believe in.

10 Q Given that the phrase "place of worship" is what we're
11 talking about here, I wonder if you consider Eagle Rock a
12 place of worship?

13 A Definitely.

14 Q Has anyone from Kennecott consulted with you about the
15 significance of Eagle Rock?

16 A No, they haven't.

17 Q Has anyone from the DEQ consulted with you about the
18 importance of Eagle Rock?

19 A Not directly. I was in on a couple of hearings with them
20 but nothing direct like a one-on-one basis or anything like
21 that.

22 MS. HALLEY: Thank you, Mr. Curtis. No further
23 questions at this time.

24 MR. EGGAN: May I ask just a follow-up question?
25 Mr. Curtis, I'm Eric Eggan, and we've met.

DIRECT EXAMINATION

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BY MR. EGGAN:

Q You mentioned that you were in on a couple of -- and I think you called them "hearings" with the Department of Environmental Quality and then the DNR?

A Right.

Q Were you talking about the government-to-government consultations that occurred between the Keweenaw Bay Indian Community and the Department of Environmental Quality and the Department of Natural Resources?

A Yes, I was.

Q Okay. Those were face-to-face meetings. Now, what did you understand the purpose of those meetings to be?

A To express to them what Eagle Rock meant to us as well from a cultural standpoint.

Q Okay. And so these were discussions directly with the community as a government communicating with the Department of Natural Resources as a part of Michigan government?

A Right. One sovereign to another sovereign.

Q Very good. And there were two meetings?

A Yes, there were.

Q One was with the representatives of the Department of Natural Resources and the other meeting was with the Department of Environmental Quality?

A Yes, there was.

1 Q Do you remember when those meetings were?

2 A Oh, within the last year. I think one was in the fall.

3 Q One was in November of 2007?

4 A I believe so.

5 MR. REICHEL: Objection. Leading.

6 A It was the fall.

7 MR. EGGAN: Well, this is purely --

8 MR. REICHEL: Lack of foundation.

9 MR. EGGAN: Are you -- I can give you the dates of
10 the meeting. I'm just trying to establish them with him.
11 Your clients were there.

12 MR. REICHEL: I'm aware of that. And I also
13 don't -- I'm going to interpose an objection as to
14 relevance. I believe it's a matter of record that -- well,
15 I don't understand how this consultation is relevant to the
16 decisional criteria under Part 632 or 31.

17 MR. EGGAN: I think that makes sense. My concern
18 was that the witness testified that he attended two
19 hearings. And I didn't want there to be confusion that
20 these were some sort of contested case proceedings. So I
21 was just merely trying to clear that up. But as long as Mr.
22 Reichel will stipulate that these were two meetings,
23 government-to-government consultations between the tribe and
24 the Department of Environmental Quality and the DNR, then I
25 think that's all we need to do.

1 MR. REICHEL: Well, I can certainly state for the
2 record it's my understanding that the meetings that Mr.
3 Eggan is referring to were as a result of a memorandum of
4 agreement between the State of Michigan and the Native
5 American tribes or communities within the State of Michigan,
6 which provides a consultation -- a process by which there
7 can be consultation between tribes and the State of
8 Michigan. It was my understanding that that was the context
9 of these meetings that Mr. Eggan has alluded to.

10 MR. EGGAN: That is the context. As long as we
11 have that stipulation, we're all set then. Very good.

12 JUDGE PATTERSON: Okay.

13 MS. LINDSEY: Good morning, Mr. Curtis. My name
14 is Sarah Lindsey. I just have a few questions for you.

15 CROSS-EXAMINATION

16 BY MS. LINDSEY:

17 Q You talked a little bit about -- I believe you said you hunt
18 in the Yellow Dog Plains area?

19 A Yes, I do.

20 Q What do you hunt?

21 A Deer.

22 Q Anything else?

23 A No. Just hunt and fish. My other members of my family do
24 the gathering, berry picking.

25 Q And how often do you deer hunt?

1 A Only supposed to -- allowed two, but sometimes we go out for
2 ceremonial purposes, community feasts. We'll be allowed to
3 get another tag through the tribe. I don't know. Four or
4 five times a year through there hunting -- specifically
5 hunting.

6 Q And you were talking about the hunting in the entire Yellow
7 Dog Plains; correct?

8 A From -- to include that and from what they call Big Eric's
9 Bridge in Skanee, Michigan. It's the beginning of Triple A
10 where you can enter it from the Baraga County side.

11 Q You often hunt in the area of the mine site -- proposed mine
12 site?

13 A We go from -- like I said, from Big Eric's all the way, come
14 out to Big Bay. Sometimes we'll turn around or just come
15 back on the highway.

16 Q And you said you also fish?

17 A Yeah.

18 Q How often do you fish?

19 A Every spring when the ice goes out and lets us get into the
20 rivers.

21 Q And again this is fishing in that entire area that you
22 described?

23 A West Branch, Little Huron. I've never fished the Salmon
24 Trout River, but I have friends that have.

25 Q Okay. And you have not fished the Salmon Trout River?

1 A No.

2 Q And you said that you personally don't do any gathering?

3 A Right. My family does.

4 Q All right. And I believe I hear you refer when you were
5 giving an example of Eagle Rock and sort of analogized it to
6 something like burial grounds. You're not saying that these
7 are, in fact, burial grounds; correct?

8 A They could be.

9 Q But not to your knowledge?

10 A Not to my knowledge that they're not.

11 Q All right.

12 Q And you also said that you would continue to use Eagle Rock
13 if you had access to it during the mining period -- if you
14 had access, I think you said, that you were continue to use
15 it?

16 A I may. It probably would be the same like I alluded to.

17 MS. LINDSEY: I have nothing further. Thank you.

18 MR. REICHEL: I have no questions.

19 MS. HALLEY: No further questions.

20 THE WITNESS: May I add one thing, your Honor?
21 Could I say something?

22 JUDGE PATTERSON: Sure. Go ahead.

23 THE WITNESS: In regards to the sacred grounds
24 like -- you keep referring to a list of -- I don't know what
25 is that? Preservation list or -- what is that? May I ask

1 what that is?

2 MS. LINDSEY: On our motion?

3 THE WITNESS: List of sites or scared sites, is
4 that? I didn't understand.

5 MS. LINDSEY: Yeah. We had talked about -- we had
6 raised a motion to address, I believe, the issue -- the list
7 is the things that are listed on --

8 MS. HALLEY: I believe he's asking about the
9 list --

10 THE WITNESS: Yeah. I was just --

11 MS. HALLEY: -- listed spaces under the National
12 Historic Preservation Act.

13 THE WITNESS: Okay. Just a little insight. A lot
14 of the sacred grounds, sacred places that pertain to the
15 Natives, the Anishinaabe -- a lot of places aren't listed.
16 What don't believe in listing them for specific reason --
17 purposes. And part of that is due to this exploitation, if
18 you will, whatever. And that's -- I just wanted to bring
19 that to your attention. There's a lot of places that aren't
20 listed that are sacred.

21 JUDGE PATTERSON: Okay. Thank you.

22 THE WITNESS: Okay.

23 MS. HALLEY: Petitioners call Doreen Blaker.

24 REPORTER: Do you solemnly swear or affirm the
25 testimony you're about to give will be the truth?

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MS. BLAKER: I do.

DOREEN BLAKER

having been called by the Petitioners and sworn:

DIRECT EXAMINATION

BY MS. HALLEY:

Q Could you state your name for the record spelling your last name?

A Doreen Blaker, B-l-a-k-e-r.

Q What is your educational background?

A I have a bachelor's degree in social science.

JUDGE PATTERSON: I'm sorry. What?

THE WITNESS: A bachelor's degree in social science.

JUDGE PATTERSON: Social science.

THE WITNESS: Uh-huh (affirmative).

Q What is your occupation, Ms. Blaker?

A I work at our tribal court system as an advocate. I sit with tribal people during criminal proceedings, juvenile proceedings, limited civil proceedings. I'm just an advocate, nothing else. No degree in law.

Q Where do you live?

A I live in Baraga, Michigan, on the reservation.

Q Are you a member of the Keweenaw Bay Indian Community?

A I am.

Q And how long have you been a member?

1 A My life.

2 Q Do you hold a particular office at KBIC?

3 A I sit on the tribal council. I'm currently in my second
4 term.

5 Q What does the tribal council do for the tribe?

6 A We wear many hats. We do a lot of things. We do
7 legislative. We do programs. We take care of our tribal
8 members.

9 Q Do you take care of them in the way of tribal traditions?

10 A Yes, we do. We have re- -- we have our culture committee.
11 We have a language program. We are bringing back a lot of
12 things that had been taken from us over the years. I don't
13 want to go into that. That has nothing to do with what
14 we're doing here time now. So I'll just state it like that.

15 Q Is KBIC part of the Anishinaabe Nation?

16 A They are. It's -- actually the Anishinaabe Nation runs from
17 North Dakota into Canada, encompasses the states also of
18 Wisconsin, Minnesota, way to the eastern into Ontario,
19 Canada. We are one of many bands of Anishinaabe.

20 Q What does it mean to you to be an Anishinaabe person?

21 A As an Anishinaabe ikwe, a woman of --

22 Q What does ikwe mean?

23 A -- the people or tribe, a woman, we are keepers of the
24 water. It is our responsibility specifically to take care
25 of our water. One of the most important things I feel is

1 we've been put here to make this place as soon as good as,
2 if not better, for future generations so that they, too, may
3 enjoy what we enjoy right now.

4 Q Do you practice Anishinaabe tradition -- traditional ways?

5 A Yes, I do. Are you specifically talking ceremonies? I
6 practice ceremonies. When you say Anishinaabe, practice
7 Anishinaabe beliefs, well, that's just something we do every
8 day as a community, you know. We live it, you know. And
9 specifically, yes, we do practice ceremonies. I do practice
10 ceremonies.

11 Q Could you describe some of those ceremonies for us and help
12 us understand the purpose of them?

13 A As I stated earlier, one of -- as a woman of -- a woman we
14 have water ceremonies which we consider very, very sacred.
15 I've participated in sweat lodges, fasting, visions, pipe
16 ceremonies, sacred fire. It's quite a lengthy process to go
17 into each ceremony and why we do them, so I'll just leave it
18 at that.

19 Q Would you mind talking a little bit more about fasting?

20 A When we practice our traditional -- we're in a unique
21 position. We live what we call "with both feet in two
22 worlds." We live the modern world but we also have the way
23 of our ancestors. And there comes a time sometimes in this
24 busy, busy world that you have to stop and you have to, you
25 know, acknowledge the gifts that the Creator gave you, you

1 know, what we have: the clothing, the food, you know,
2 what -- our medicines, you know, what's been given to us.
3 And there's certain areas with certain manitos or spirits
4 that reside in those areas and we stop and we acknowledge
5 and send megwich to them and to the Creator for what they've
6 given us.

7 Q What does "megwich" mean?

8 A I'm sorry. Thank you; give thanks. And that's -- you know,
9 there's many different fasts, but in particular when you
10 said "fast" I was thinking of a one-day fast and that's when
11 you just stop everything and just remember where everything
12 came from. And we can't live without water. We can't live
13 without, you know, clean air. We can't live without food.
14 You know, it's -- sometimes you just have to stop and
15 remember that; that we depend on this environment. You
16 know, we are -- we're the pitiful ones; we're the ones who
17 depend on this and we have to remember that and give thanks
18 for what we have.

19 Q Do you gather; are you a gatherer in your tribe?

20 A Yes, I am. I don't hunt and fish. I have three sons that
21 do that for me; there's no need for me to go and do that.
22 They're good hunters and they're good fishermen and I'm very
23 proud to say that. They bring in deer, fish and stuff like
24 that. So no, I don't hunt and fish, but I do gather. I
25 gather plants. I'm just starting gathering medicines; it's

1 a very -- it's a lifelong process of learning and I'm
2 learning right now to -- basically I'm out there -- they're
3 being identified; we're showing how to collect them, when to
4 collect them. You only take as much as you need. Well, in
5 the case of like berries, well, we get those every year. We
6 all like berries, so yes, I do do that; different kinds,
7 different areas.

8 Q Are you familiar with a place called Eagle Rock?

9 A Yes, I am.

10 MS. HALLEY: Would you put up that map, please?

11 Q Could you show us on this map where Eagle Rock is, in your
12 understanding of it?

13 A It's right there (indicating).

14 Q Okay. What is your understanding of the orange line through
15 it?

16 A I stated earlier it's a tunnel going over to that area.

17 MS. HALLEY: Could you put the other picture up,
18 please?

19 Q Can you identify what this is a picture of?

20 A That's Eagle Rock.

21 Q Okay. Is Eagle Rock important to the Anishinaabe people?

22 A Yes, it is. Do you want me to go further, or just --

23 Q Please.

24 A There's certain areas where there's spiritual significance
25 and areas where we and our ancestors, our people in the past

1 have fasted and went on vision quests. There's, like I
2 said, many different times of year and number of days that
3 you will go on things like that and they would look for
4 places of significance and people would usually be brought
5 there for those purposes of fasting or looking for a vision.
6 And the area's well known to, you know, our people. I mean,
7 you know who was Yellow Dog; he was an Ojibwa. You know, I
8 told you the story just to shorten it up. You know, he was
9 taking his son out for, you know, a vision and he had been
10 ambushed and, you know, that's Yellow Dog, you know. I
11 mean, the area is quite well known to our area -- or to our
12 people; well known to other natives who had been there a
13 long time ago also.

14 Q Roughly when would that event with Yellow Dog and his son
15 have -- would have taken place?

16 A Well, he shot and killed two Sauk Indians, so they had
17 rifles at the time, so that would have been at least a
18 couple hundred years ago. I can't give you an exact date of
19 when this event happened; I just know what I've been told.

20 Q So your understanding though is that your people have been
21 using Eagle Rock and the vicinity of the Yellow Dog Plains
22 for at least, as you said, a couple hundred years?

23 A Oh, more than that, but the story of Yellow Dog in
24 particular probably goes anywhere from 2- to 300 years back.
25 I don't have an exact date.

1 Q Okay. Do you go to the Yellow Dog Plains?

2 A Yes, I do.

3 Q And what do you do at the Plains?

4 A Depends; depends on what time of year it is. Sometimes you
5 gather berries. Like I said, I gather medicines; it's very
6 limited. What I do there that -- you know, I want people to
7 understand I'm just -- on the path of that, that's a
8 lifelong thing to do. And sometimes we just take rides
9 through there. It's quiet and peaceful and you want to get
10 away from the -- I don't want to call it "the rat race," but
11 the business of everyday life. You know, sometimes you've
12 just got to go somewhere where it's quiet.

13 Q And when you go there is it quiet or is it loud? What's it
14 like when you're there? Can you just describe it to us?

15 A It's just quiet; it's peaceful. I don't know how else to
16 say it. It's a quiet place to go.

17 Q Do you hear, you know, horns honking?

18 A No. No.

19 Q Do you see many people usually?

20 A No, you don't see lots of people going through. I mean,
21 you're lucky if you run into one or two. You know, and like
22 I said, we've fasted up there and you might see me --

23 Q Just a minute. You what?

24 A On Eagle Rock we've fasted and, you know, it's peaceful. I
25 mean you're lucky to see maybe four or five vehicles.

1 Q Over the course of how long?

2 A Well, we get -- we start out with a sunrise ceremony and the
3 fire is made and we pray and we go out -- I don't know.
4 We're out there from like 6:00 to maybe 6:00, a good 12
5 hours.

6 Q And you -- how many cars did you see in 12 hours?

7 A I don't know, maybe four or five.

8 Q And that's --

9 A And that also includes four-wheelers; I said vehicles.

10 Q Ah, four-wheelers and cars. Thank you. Okay. And that's
11 from Eagle Rock and --

12 A Yeah, we're up on the top there; we're all in different
13 areas and --

14 Q And you're looking down at -- which roadway from up there
15 are you seeing these vehicles?

16 A On the AAA; is that what you call it?

17 Q And is the AAA the primary transportation route on the
18 Yellow Dog Plains?

19 A Yeah.

20 Q I believe it's really the only one, isn't it?

21 A Yes. I'm sorry. Yeah.

22 Q You testified that you have been to Eagle Rock?

23 A Yes, I have.

24 Q Okay. How often do you go to Eagle Rock?

25 A Three, four times a year. It's when I'm directed by our

1 elders. When we're told to go, you know, and do ceremonies,
2 or our spiritual leaders, you know, we do that. And there's
3 reasons for it.

4 Q Okay. Do you normally go there with other people or by
5 yourself?

6 A I usually go with other people. I have a terrible sense of
7 direction, so -- been lost a couple times out there.

8 Q And when you're there what do you do there? When you go to
9 Eagle Rock what is it that you do there?

10 A As I had stated earlier, we've got various ceremonies that
11 we may perform. We've done different ceremonies; like I
12 said, a sunrise ceremony which includes a pipe ceremony, the
13 lighting of a sacred fire and the acknowledgment of that.
14 The fasting, the praying.

15 Q What do mean by "a sacred fire"?

16 A It's -- how do I want to say this? It's where we put our
17 asema, our tobacco; we're offering our prayers before we go
18 up there. And while we're up there we're also offering our
19 prayers with tobacco ties. Tobacco ties are put into
20 different colored pieces of cotton; they represent different
21 directions or it might be your own personal colors. Those
22 are offered while we're up there. It's just a lot of
23 praying. When we're done we come down, we have a feast. We
24 feed the fire, which is before we even eat any of the food
25 that's been prepared. We acknowledge and thank those who

1 have given of themselves so that we may have that feast and
2 that's offered into the fire. We then feast. We clean up
3 our area; it's important to clean your area after you leave.
4 And then we're done. And that's a daytime fast.

5 Q Okay. So you go there and spend the whole day from sunrise
6 to sundown praying and carrying out these ceremonies?

7 A Yes.

8 Q For several times a year, you said, you may do that?

9 A Well, not several. I've gone -- you know, maybe others go a
10 little more than me. I can't -- you know, I've seen -- you
11 can tell when other people have been there and they do --
12 there's many ceremonies that are done. I forgot about moon
13 ceremonies. I mean, it's just -- we could sit here all day.
14 But in particular I would say I go three, four times.

15 Q Okay. Is there anything unique about Eagle Rock as far as
16 you know?

17 A Yes, it is. Like I had said earlier, when our people and
18 when we're put out there is areas that we're put into.
19 There's "markings" -- I guess we want to say that -- specify
20 an area, why it's sacred to our people and at the top is
21 what we call or what I've been told is nanaboozho's
22 footprint, which it's the indent in the rock. Nanaboozho
23 was -- he gave many gifts to the Ojibwa people. He brought
24 many things to help us survive and showed us the medicines,
25 the foods. It's very hard to talk about him right now

1 because those kind of stories are told in the wintertime.
2 When the Earth is sleeping we bring out the stories of
3 nanaboozho. But on there is his footprint and it's consider
4 a sacred area. It is a sacred area. There are certain
5 spirits that watch over that area and they're up there. And
6 I really don't feel comfortable talking about them. That's
7 not my area to talk about.

8 Q Could you just go to a different place and carry out these
9 ceremonies and have the same experience?

10 A The reason that we would go into that particular area is to
11 acknowledge the gifts that come from there. There's
12 medicines actually right in Eagle Rock that are collected.
13 When you go into an area such as that not only is there the
14 spiritual significance of nanaboozho coming through there,
15 but there's also medicines that are gathered in that area.
16 No. When I go there it's to acknowledge the gifts that are
17 there and thank the Creator for what's coming out of that
18 area. If I go down onto the reservation and I go to the --
19 into the bay area, to the lake, I'm offering up and thanking
20 for the gifts that are coming out of that area.

21 Q So places to pray are not interchangeable necessarily?

22 A No.

23 Q Okay.

24 MS. HALLEY: Would you put up the picture, the map
25 again?

1 Q Ms. Blaker, do you see the sort of gray outline around the
2 facilities there?

3 A Yes.

4 Q And Mr. Curtis testified that that's a fence; that's your
5 understanding of this picture?

6 A Is that there's going to be a fence, yes.

7 Q Right. I believe the permit specifically states eight-foot
8 high chainlink fence surrounding the facilities as described
9 in this figure?

10 A Yes; I heard him read that.

11 Q So by looking at this figure does it look to you as if Eagle
12 Rock is inside the fence?

13 A Yes, it is.

14 Q So would you have access to Eagle Rock then?

15 A If I scaled the fence I could probably get in there. I
16 don't know if our elders could scale the fence though. But
17 usually a fence means to stay out and you have to respect
18 that.

19 Q Indeed. How do you feel about being fenced out of your
20 sacred site?

21 A Irritated. I think anybody would feel irritated and more
22 than angry if all of a sudden you went somewhere and it's
23 been fenced off and you're not allowed in anymore, whether
24 it -- I would just feel angry and irritated.

25 Q Let's assume for just a moment that you could actually get

1 to Eagle Rock during the life of this proposed mine. Would
2 you still want to go there and pray even if the surface
3 facilities you see are in that green blob sort of behind --
4 well, in this picture to the north of Eagle Rock? Would you
5 still want to use Eagle Rock in the same way that you and
6 your people have been using it?

7 A That's a hard question to answer. Well, there's, you know,
8 spirits in that area. I don't know quite how easy it would
9 be to perform our ceremonies if there's a whole bunch of
10 business going on in there. I understand there'll be quite
11 a lot of traffic. Cripe, I wouldn't want to get ran over or
12 something when I was there. I think it would be --

13 Q Well, what's your understanding of how the area would be
14 different than it is now if the mine were going on there?

15 A There's going to be a lot of -- there's buildings and
16 there's going to be a lot of -- there's going to be a
17 tunnel, for one thing. It looks like, you know, it's coming
18 out of Eagle Rock, so if we're standing on top of it and
19 they're rumbling out from underneath it, you know, it's -- I
20 don't really know anybody when they're worshipping if you had
21 a big truck coming out from underneath the steps of your,
22 you know, your church or your synagogue or something how you
23 would feel about that. You know, it's kind of --

24 Q What does the phrase "place of worship" mean to you?

25 A It's an area where you go to talk to the Creator. There's

1 many places around the world. You know, a place of worship
2 could be a church or a mosque, a synagogue, a holy city, a
3 sacred spring. You know, they're all over the world.
4 There's, you know, Eagle Rock, you know. There's many
5 places many people have, you know, what they call places of
6 worship. It's not necessarily a building. I don't ever
7 recall that you have to be in a building to pray to the
8 Creator in anybody's religion.

9 Q Do you consider Eagle Rock a place of worship?

10 A The "place of worship" does -- gets us when that terminology
11 is used, but yes, I'll say we consider it a place to talk to
12 the Creator, yes. There's spirits we acknowledge, there's
13 medicines in that area on that rock, yes.

14 Q Has anybody from Kennecott ever consulted with you about the
15 importance of Eagle Rock?

16 A No.

17 Q How about anybody from the DEQ?

18 A Me? No. I attended public hearings.

19 Q What was the testimony related to Eagle Rock at those public
20 hearings?

21 A There was -- from tribal members? I mean, there was like --

22 Q Yes, from tribal members.

23 A -- lots of people at these hearings.

24 MS. LINDSEY: Objection to hearsay and probably
25 the relevance at this point to what the testimony at public

1 hearings were.

2 MS. HALLEY: I'll withdraw the question.

3 JUDGE PATTERSON: All right.

4 MS. HALLEY: Thank you. No further questions at
5 this time.

6 MS. LINDSEY: Good morning, Ms. Blaker.

7 THE WITNESS: Good morning.

8 CROSS-EXAMINATION

9 BY MS. LINDSEY:

10 Q Do you remember the first time that you went to Eagle Rock
11 for any sort of fasting or other ceremony?

12 A Maybe about four years ago.

13 Q Do you remember the first time you heard of Eagle Rock
14 referred to as either that or is it also referred to as Migi
15 zii wa sin?

16 A It's been called that.

17 Q Do you remember the first time you heard it referred to as
18 either of those things?

19 A Specifically as that?

20 Q Yes.

21 A The name or the place? Because the place we've known --
22 I've known for a long time. Our people are quite familiar
23 with it, but the specific name "Eagle Rock"? A while ago.

24 Q Within probably the time when you have been there a few
25 years ago?

1 A Eagle Rock?

2 Q Yes.

3 A Yeah. I've also known it as -- it's very hard for me say
4 this. We've just begun doing our names in Ojibwa. Got a
5 beautiful saying on traditional names and stuff and I don't
6 know if I can this correctly, but mazhaamegosikaa zibii.
7 I've also known it as that. That's the proper name for it.
8 But names change; I mean, we've got names for all sorts of
9 things. "Eagle Rock" I guess is probably four years ago;
10 known it by other names for a long time.

11 Q And you told a story about -- I think it was how the Yellow
12 Dog Plains got its name?

13 A I don't know if it specifically got its name. The reason I
14 brought up Yellow Dog was because I'm trying to show you,
15 you know, you people that we've been in and out of that area
16 for a long time. The specifics -- you know, it could have
17 been called "Yellow Dog" by us. No, I messed that up. I
18 don't want to say we specifically called it Yellow Dog. The
19 story is of Yellow Dog and he had been killed there. That's
20 what I was trying to say. I don't want to go into the story
21 but, you know, my point is he was putting his son out for a
22 vision quest when he had been -- they had been attacked by a
23 party of Sauk Indians.

24 Q That was the story about --

25 A It just kind of stuck as the Yellow Dog Plains. The place

1 where Yellow Dog was killed, you know. I could go into that
2 story if you'd like.

3 Q No.

4 A Okay. You don't want to hear about it.

5 Q Thank you. You talked about the tunnel and your
6 understanding of it going through Eagle Rock?

7 A Uh-huh (affirmative).

8 Q You do understand -- correct? -- that that tunnel is going
9 underneath Eagle Rock?

10 A Right.

11 MS. LINDSEY: Okay. Thank you. I've nothing
12 further.

13 THE WITNESS: Okay.

14 MR. REICHEL: I have no questions.

15 REDIRECT EXAMINATION

16 BY MS. HALLEY:

17 Q Does it make a difference to you at what level the tunnel
18 goes through Eagle Rock, if it's at the very top, in the
19 middle, in the very bottom, underneath the ground surface;
20 does that make any difference to your relationship to Eagle
21 Rock?

22 A Yes, it does.

23 Q How so?

24 A Well, the Earth is sacred from the top -- from up all the
25 way down. The gifts are also inside the Earth also that we

1 get. Yes, it does make a difference; just leave it at that.

2 MR. EGGAN: I don't have anything.

3 MS. HALLEY: Thank you, Ms. Blaker. No further
4 questions.

5 THE WITNESS: Thank you, your Honor.

6 (Witness excused)

7 MS. HALLEY: Can we take a short break?

8 (Off the record)

9 MS. HALLEY: Petitioners call Harland Downwind.

10 REPORTER: Would you raise your right hand? Do
11 you solemnly swear or affirm the testimony you're about to
12 give will be the whole truth?

13 MR. DOWNWIND: I do.

14 HARLAND DOWNWIND

15 having been called by the Petitioners and sworn:

16 DIRECT EXAMINATION

17 BY MS. HALLEY:

18 Q Could you state your name and spell your last name for the
19 record?

20 A Harland Downwind, D-o-w-n-w-i-n-d.

21 Q Where do you live?

22 A I currently reside in Brainerd, Minnesota.

23 Q What is your occupation?

24 A Well, my occupation right now is I work for the Sault Ste.
25 Marie Tribe of Chippewa Indians as a traditional

1 practitioner.

2 Q What does that mean?

3 A Well, put it simply the tribal medicine man, which they are
4 typically. So in a framework of understanding here it would
5 be that I work with the traditional plants of medicines and
6 ceremonies for Anishinaabe people.

7 Q Okay. Are you certified as a clinical provider for the
8 traditional medicine?

9 A Yes, I am, through the Michigan Intertribal Council of
10 tribes here in Michigan; also by the Ontario Council of
11 Chiefs and the Minnesota Midewin Society.

12 Q How many certified clinical providers are there in Michigan?

13 A I believe I'm the only one at this point.

14 Q Okay. Are you a member of the Anishinaabe Nation?

15 A Yes, I am.

16 Q Okay. And you just said that you live in Brainerd,
17 Wisconsin?

18 A Minnesota.

19 Q I apologize -- Minnesota. Are you a member of a tribe in
20 Minnesota?

21 A I am of the Anishinaabe Nation also, Minnesota branch, I
22 guess. They anishinaabe Nation is spread from here to North
23 Dakota, eastward to Toronto, north to Hudson Bay and over
24 into parts of Manitoba. So the Anishinaabe Nation is
25 quite -- covers a vast area.

1 Q Okay. And you're about to testify about the Yellow Dog
2 Plains and Eagle Rock. If you're from Minnesota what takes
3 you to the Yellow dog Plains and Eagle Rock?

4 A Well, one of the purposes that I have as defined by my
5 elders as a spiritual leader is that I'm to bring back a lot
6 of the traditions to our tribal people all over the
7 Anishinaabe Nation. So I travel; I travel quite extensively
8 throughout the month to different Anishinaabe Nations
9 throughout the country. So my experience with Yellow Dog
10 is -- and Eagle Rock specifically, is the spiritual adviser
11 to the ceremonies that are conducted there.

12 Q Do you have a particular role in the Anishinaabe culture?

13 A As it stands it's identified for me by my elders and by the
14 things that I do for our tribal people is what we call the
15 nah-nan-wii-way wi-ni-nii. Again, that would be tribal
16 healer or medicine man to put it in laymen's terms and
17 equating as that.

18 Q Are you a member of the Midewiwin Society?

19 A Yes, I am. I'm mide priest.

20 Q What does that mean?

21 A That means that I've been initiated into our religious
22 society. To equate, it's like the priesthood; different of
23 course, but I guess that'll be the same thing, the Midewiwin
24 Society.

25 Q And what is the purpose of the Midewiwin Society?

1 A The Midewiwin Society is -- I guess it's like an institute,
2 a school if you want -- might say it, to where our elders
3 teach religious duties to initiates.

4 Q And you're a member of this school?

5 A Yes, I am.

6 Q And is there a gradation of membership in the school; I
7 mean, are you brand new or --

8 A There is levels. There's levels of initiates up to eighth
9 degree. And I'm not brand new but I'm -- it could take a
10 person well over ten years to finish first degree in
11 ceremonial religious duties involved in that first degree.

12 Q So this is a serious and lifelong road for you?

13 A Yes, it is. It's a lifelong obligation, yes.

14 Q And how large of a geographical area does the Midewiwin
15 Society serve?

16 A Well, I've worked in Anishinaabe health in Toronto, Ontario
17 to the east. I've also been called on by the Mohawk people
18 in New York to provide service out there. Down to Tama,
19 Iowa which is by Ames Iowa down south to Sweet Grass,
20 Saskatchewan in the west, Winnipeg, Manitoba; throughout
21 Northern Ontario, which is Quinora, White Dog and those
22 areas there also. So it's a huge area.

23 Q Could you describe in more specific ways what you do as a
24 Midewiwin priest when you're traveling to other places?

25 A Well, like I said, primarily my duties include traditional

1 practices that are handed down from our elders, which is the
2 ceremonial aspect, the prayer aspect, and also the medicines
3 and the healing part of it.

4 Q Okay. Are you familiar with a place called Eagle Rock?

5 A yes, I am.

6 MS. HALLEY: Could you put the figure 4-2 up,
7 please?

8 Q Could you show us where Eagle Rock is on this?

9 A Right there (indicating).

10 Q Okay. And what is your understanding of the orange line
11 through --

12 A I believe that's the proposed mining tunnel.

13 MS. HALLEY: Could you put up the slide 11 of
14 Exhibit 11?

15 Q Are you familiar with this place?

16 A Yes; that's Eagle Rock.

17 Q Okay. What is it like at Eagle Rock when you've been there?

18 A One of the things in the concepts or the beliefs of the
19 Anishinaabe people, all Mother Earth is sacred. All of
20 Mother Earth; not just Eagle Rock but all of the Earth,
21 water, the rocks and everything on Mother Earth. But in
22 particular we're given sites or places by God -- or "The
23 Great Spirit" as we refer to it -- that are marked for us
24 that we are to find and we're to use. And we look for these
25 particular markings on rocks, on lake shores, mountains, you

1 know, there being one place of the four corners of the
2 Earth. Also Dreamer's Rock in Canada, Manitoulin Island
3 area. Those are very, very sacred. I guess those being
4 like the Vatican to us; you know, a real, real powerful
5 place of worship. And that -- Eagle Rock has a significant
6 marking on it that I've only seen in two places in my
7 travels and one is in -- among my Cree relatives in
8 Saskatchewan. They have a mountain -- a sacred mountain
9 also like -- that has the same markings as Eagle Rock. And
10 this is the other place that I've seen that.

11 Q So in all of your traveling around the Midwest and Canada
12 you've only seen one other place other than Eagle Rock that
13 has this particular significant marking?

14 A That's correct.

15 Q Okay. What does that marking mean to you?

16 A That marking to me and what -- when I was introduced to
17 Eagle Rock told me of tribal teachings and legends of --
18 you've heard mentioned by Mr. Curtis Winaboozho and by Ms.
19 Blaker. Winaboozho we believe in our traditions and our
20 religious society is the son of God, similar to Jesus. And
21 that there's certain places in our creation story that he
22 has marked for us to use for prayer and for ceremony.

23 Q And is it your understanding that Eagle Rock is one of those
24 places?

25 A Yes, it is.

1 Q Could you describe the history of Eagle Rock, maybe not
2 quite as far as back to Winaboozho, but your ancestors?

3 A In my travels, like I say, I go to many different places
4 around the country and provide ceremonies to our Anishinaabe
5 people. They have their sacred sites on their reservations.
6 Like in Red Lake I can tell you about the place of the
7 little people that we use for sacred offerings and
8 nothing -- it's like little churches all over, I guess you
9 might say, if you want to equate to something. In my
10 reservation I could tell you exactly where our sacred places
11 are. And as I said earlier, part of my non da go zeein or
12 purpose in life is to provide ceremonies and medicines and
13 healing ceremonies to our people as Midewiwin Society
14 prescribes for me to do and also to bring back a lot of our
15 sacred teachings that the elders carry.

16 Q I see. You've been to Eagle Rock yourself?

17 A Yes, I have.

18 Q And why did you go to Eagle Rock? What prompted you to go
19 there?

20 A Well, we needed to do -- conduct some sacred ceremonies,
21 some sacred fasting, spiritual offerings for the health and
22 benefit and welfare of the people of the Keweenaw Bay Indian
23 Tribe. So we -- I needed -- I asked the people there of a
24 sacred place that we could use and that's how I was
25 introduced to Eagle Rock.

1 Q And about when was that?

2 A That was in 2002.

3 Q So about six years ago?

4 A Yes.

5 Q And in that discussion of deciding where to go and -- well,
6 where to go, was the mine a part of that discussion at all?

7 A I don't believe so; no.

8 Q Okay. So you weren't going there because of the proposed
9 mine?

10 A No, we were going there to pray.

11 Q Pardon me?

12 A We were going there to pray.

13 Q Going there to pray? Okay. Is it your understanding that
14 Anishinaabe people have been using Eagle Rock for a long
15 period of time?

16 MS. LINDSEY: Objection; foundation.

17 MS. HALLEY: I'll lay a foundation.

18 JUDGE PATTERSON: Okay.

19 Q You have heard and learned from your elders about the
20 history of Eagle Rock, have you not?

21 A From the Keweenaw Bay elders, yes.

22 Q Okay. And they for some reason indicated that Eagle Rock
23 was a special place?

24 A Yes, they did.

25 Q Okay. What would lead them to that conclusion do you think,

1 based on your experience of Anishinaabe culture?

2 A From what I understand they prayed there before in the past.

3 Q Roughly how long into the past; do you have any idea?

4 A Well, some of the elders that I talked to were 80 years old
5 there in the tribe, so, you know, who knows?

6 Q Does the significance -- this marking on Eagle Rock, does
7 that lead you to any conclusion at all about how long your
8 people have probably been using Eagle Rock as a sacred site?

9 A Well, according to the teachings, if -- and the Midewiwin,
10 that anyone with understanding of Winaboozho -- like I said
11 -- like I said, it's not our tradition to talk about that
12 person -- they would have you utilize that --

13 Q Just for the record --

14 A -- as a place of worship.

15 Q Just for the record, Mr. Downwind, you were using the name
16 "Winaboozho" and she used the term "Nanaboozho." Are those
17 the same?

18 A Dialect; dialect.

19 Q Thank you. But you're referring to the same entity?

20 A Person, yes.

21 Q Okay. Thank you.

22 A It's western dialect; eastern dialect. Nanaboozho;
23 Winaboozho.

24 Q Okay. Thank you for that clarification. What are the
25 historic uses of Eagle Rock?

1 A Well, in my understanding it's a place for vision and
2 fasting and that's what we do there. Vision quests being
3 seeking a greater communion with The Great Spirit. Fasting
4 is short-term one to four days of prayer and offering.

5 Q Does that mean staying at that one particular place for one
6 to four days?

7 A yes.

8 Q Okay. One to four days 24 hours a day or what?

9 A Yes. It's 24 hours a day, whether it's one -- it's sunup to
10 sundown, or sunup to sunup or four sunups, four sunrises.
11 That's how we do it in terms of use.

12 Q Okay. Thank you. So since you started going to Eagle Rock
13 how often do you go there?

14 A Well, specifically I would say twice a year up to two to
15 four days, because -- and let me further elaborate on that.
16 It's because that we have certain times that we fast and
17 that's the spring and the fall when -- and then as a sacred
18 site we use it all the time for like Mr. Curtis stated of
19 making our tobacco offerings; which basically is just
20 stopping to pray, to pray in those terms.

21 Q So this may sound like a silly question at this point, but
22 is Eagle Rock important to you on a personal level?

23 A Yes, it is.

24 Q Why is that?

25 A Because of the -- like I said, the markings and the power,

1 the spiritual power of the region and the area.

2 Q Okay. And you've talked about fasting at Eagle Rock. What
3 else do you do at Eagle Rock?

4 A Well, we've done a number of ceremonies over there. And I
5 guess -- well, we've done tobacco ceremonies and we do
6 ceremonies where we feed our ancestors, feed our -- the
7 spirits of the region. We pay tribute and homage to the
8 land right there. We believe that every space is occupied
9 by a spirit; every part of the Earth is occupied by a
10 spirit. So when we go there we pray with those spirits
11 and -- but our greater communication is with The Great
12 Spirit, our God.

13 Q So you just said that you believe that every part of the
14 Earth is occupied by spirits?

15 A Yes, it is.

16 Q Okay. So is Eagle Rock any different than any other part of
17 the Earth to you?

18 A Like I said earlier that there's certain places on the Earth
19 that are marked, I guess, and like I said, like there be
20 one -- being one, Eagle Rock being one, the mountain in
21 Saskatchewan that I've been to and Dreamer's Rock in Canada.
22 They're marked in a certain way by The Great Spirit and
23 certain things that are there for us to recognize as
24 Anishinaabe people. That's why we say it's a recognizable
25 prayer site.

1 Q Do you collect plants?

2 A Yes, I do.

3 Q What do you do with those plants after you collect them?

4 A Well, that's a whole process in itself. Certain plants can
5 only be picked at certain time of year. We pick plants
6 there also.

7 Q "There" being at Eagle -- on Eagle Rock or in the vicinity
8 of it?

9 A Around the area in the vicinity, yes. Certain things that
10 we use for healing, herbal medicines; can equate it to that,
11 I guess. And we pick those and we process them, dry them,
12 use them for ceremonial healing.

13 Q Just to be clear, do you gather medicinal plants on Eagle
14 Rock?

15 A Yes, I have.

16 Q Okay. And is there -- are there unique plants there that
17 you have trouble finding at other locations?

18 A Well, there's some plants that we use for kidney and
19 diabetics, which is -- we use a lot of those within our
20 tribal nation right now, so yeah. Yes, there's just -- just
21 there at Eagle Rock.

22 Q Oh, okay.

23 A There's also certain cancer plants there.

24 Q Certain --

25 A Plants we use for cancer.

1 Q Plants you use for cancer?

2 A Yes.

3 Q That are unique to Eagle Rock?

4 A Yes. They're within the jack pine tree.

5 Q Okay.

6 MS. HALLEY: Could you put the site map up again?

7 Q Okay. We've gone over this a couple of times at this point,
8 but do you see the gray line around the surface facilities
9 there?

10 A Yes, I do.

11 Q And what does that gray line indicate?

12 A I understand it's a proposed fence.

13 Q Is the rock inside or outside of the fence?

14 A It's inside the fence.

15 Q Inside the fence. How do you feel about that, Mr. downwind?

16 A Well, fences are made to keep people out. I believe that's
17 what the fence is going to be used for.

18 Q How do you feel about being kept out and off of Eagle Rock?

19 A Well, I guess it's a tragedy. You know, it's another loss
20 for our people, you know. That's the way I look at it.

21 Q Could you go to some other sacred site and have the same
22 spiritual experience that you have at Eagle Rock?

23 A You know, we conduct many, many ceremonies a year, but each
24 one is individual and within itself unique, so there would
25 be no other place like Eagle Rock. When we do a ceremony

1 there it's the ceremony for that area.

2 Q I see. Okay. Let's assume for a moment that you could
3 access Eagle Rock but that the mining were going on in the
4 vicinity, as you see there adjacent to Eagle Rock; right
5 across the road about a quarter of a mile away more
6 facilities. Would you still go to Eagle Rock if that were
7 the case?

8 A Well, provided you could get through the fence, I probably
9 wouldn't go back there.

10 Q Why not?

11 A Because it would be desecrated.

12 Q And why is that? If the -- what if the top of Eagle Rock
13 were left undisturbed and the top looks just like it looks
14 today, then what?

15 A I believe -- you -- in understanding our culture and
16 traditions that there are -- it goes down below.

17 Q What do you mean?

18 A It goes -- the spiritualness of the rock or the area goes
19 straight to the core of the earth, according to our
20 teachings.

21 Q So does it matter to you if the tunnel is at the very top or
22 in the middle or underneath the ground surface of Eagle
23 Rock? Does that -- what does -- does that have anything to
24 do with the spiritual nature of Eagle Rock for you?

25 A Yes, it does. As I said, it would be desecrated. It would

1 not be the same.

2 Q Even though the tunnel is proposed to be beneath the ground
3 surface?

4 A Yes. To put it in another analogy, it would be like
5 Christians, you know, finding -- say they found dinosaur
6 bones under their Calvary Hill and they wanted to dig that
7 up. Well, that would be desecrating that site. It's the
8 same thing.

9 Q I see. What does the phrase "place of worship" mean to you?

10 A A place where I can commune with the great spirits.

11 Q Do you consider Eagle Rock to be a place of worship?

12 A Oh, yeah; yes, I do.

13 Q Has anybody from Kennecott ever made any effort to talk to
14 you about the importance of Eagle Rock?

15 A No.

16 Q Has anybody from the DEQ ever made any effort to talk to you
17 about the importance of Eagle Rock?

18 A No.

19 MS. HALLEY: I don't have any more questions at
20 this time.

21 MR. EGGAN: I have nothing.

22 MS. LINDSEY: Good morning, Mr. Downwind.

23 THE WITNESS: Good morning.

24 MS. LINDSEY: I have just a couple of questions.

25

CROSS-EXAMINATION

1 BY MS. LINDSEY:

2 Q You wrote a letter to Susan LaFernier, did you not, about
3 Eagle Rock?

4 A Yes, I did.

5 Q And that was in 2006?

6 A Yes.

7 Q If I can just read from your letter, you said, "I was asked
8 by the Keweenaw Bay Indian community to look at an area" --

9 MR. EGGAN: Counsel, is this an exhibit?

10 MS. LINDSEY: It is not, but I'm going to ask him
11 to --

12 MR. EGGAN: Well, then please don't read it until
13 it's been offered and established as an exhibit.

14 MS. LINDSEY: I don't believe it needs to be an
15 exhibit to talk to him about his letter.

16 Q You wrote a letter; correct?

17 A Yes, I did.

18 Q Okay.

19 MS. LINDSEY: I can make it an exhibit. I was not
20 going to make it an exhibit.

21 MR. EGGAN: It's up to you, Counsel, but I -- if
22 it's not an exhibit, I'd just as soon you not read it.

23 JUDGE PATTERSON: Well, it's a letter that Mr.
24 Downwind wrote, and I think --

25 MS. LINDSEY: Correct.

1 JUDGE PATTERSON: -- your just asking him to
2 acknowledge the language of that, as I understand.

3 MS. LINDSEY: That's all I'm asking.

4 JUDGE PATTERSON: All right. I'll allow that.

5 MS. LINDSEY: Okay.

6 Q So in that letter you were talking to Ms. LaFernier --
7 correct? -- about being asked to look at an area called the
8 Eagle Rock?

9 A Uh-huh; yes, I was.

10 Q And that was in 2006?

11 A Okay.

12 Q So was it Ms. LaFernier who asked you to look at Eagle Rock?

13 A Yes, it was. But we had already been using it since 2002.

14 MS. LINDSEY: I have nothing further. Thank you.

15 THE WITNESS: Thank you.

16 MR. REICHEL: I have no questions.

17 MS. HALLEY: I just have one clarifying question.

18 REDIRECT EXAMINATION

19 BY MS. HALLEY:

20 Q When you first started using Eagle Rock in 2002, did it have
21 anything at all to do with the proposed mine?

22 A No. As I stated earlier, it was for prayer basically for
23 the travel people; that we needed new ceremonial offerings
24 for the travel people. That was the recommended place by
25 the elders.

1 MS. HALLEY: Thank you. No further questions.

2 JUDGE PATTERSON: Thank you, sir.

3 MS. HALLEY: Thank you.

4 MR. HAYNES: Your Honor, before we call our next
5 witness, I'm afraid we have to take that dreaded technology
6 break.

7 JUDGE PATTERSON: Okay. All right. How long do
8 you need?

9 MR. HAYNES: Five to ten minutes.

10 (Off the record)

11 MR. HAYNES: Petitioners call Robert Prucha to the
12 stand.

13 REPORTER: Would you raise your right hand? Do
14 you solemnly swear or affirm the testimony you're about to
15 give will be the whole truth?

16 DR. PRUCHA: I do.

17 ROBERT H. PRUCHA, PH.D.

18 having been called by the Petitioner and sworn:

19 DIRECT EXAMINATION

20 BY MR. HAYNES:

21 Q Would you say your name for the record and spell your last
22 name, please?

23 A Robert H. Prucha. It's P-r-u-c-h-a.

24 JUDGE PATTERSON: I'm sorry. Can you do that
25 again?

Cohen Deposition Transcript

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the Matter of: File Nos. GW181-162 and MP 01 2007

THE KEWEENAW BAY INDIAN COMMUNITY, HURON MOUNTAIN CLUB, NATIONAL WILDLIFE FEDERATION AND YELLOW DOG WATERSHED PRESERVE, INC., petitions on permits issued to Kennecott Eagle Minerals

Part: 31 Groundwater Discharge 623, Nonferrous Metallic Mineral Mining

Agency: Department of Environmental Equality

Case Type: Water Bureau and Office Of Geological Survey

TELEPHONE DEPOSITION OF SUMMER COHEN

Taken by the National Wildlife Federation and Yellow Dog Watershed Preserve, Inc., on the 25th day of April, 2008, at Keweenaw Bay Indian Community Tribal Center, 16429 Bear Town Road, Baraga, Michigan, at 10:30 a.m.

APPEARANCES:

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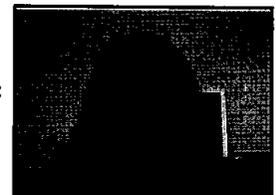
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*Note: Exhibit retained by the witness.

Baraga, Michigan

Friday, April 25, 2008 - 10:43 a.m.

REPORTER: Would you raise your right hand, please? Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth?

MS. COHEN: Yes.

REPORTER: Thank you.

MR. HAYNES: This is Jeff Haynes speaking, and this is the de bene esse deposition of Summer Cohen taken pursuant to the Administrative Rules for Contested Cases before the DEQ and pursuant to the Administrative Procedures Act and the Michigan Court Rules and allowable for purposes under those rules. Also, the deposition is being taken by telephone by agreement of counsel, and I appreciate that agreement.

Before we get started, I understand that other counsel may have some statements on the record.

MR. ETTINGER: Yeah, and we can make appearances, as well. This is Dan Ettinger appearing on behalf of Kennecott Eagle Minerals Company, and we might as well just state on the record we spoke beforehand and agreed that we will make objections as to form, but so as not to interrupt proceedings, we've agreed to preserve our evidentiary objections.

I do, however, just want to state up front, and I

believe we've all -- the Counsel have talked about this in advance, but we do want to object about any testimony from Ms. Cohen that goes beyond the issue of standing. As we've indicated previously, our position is that Petitioners have indicated that Ms. Cohen and other tribal witnesses have been identified only to establish KBIC's standing and for no other purpose. So we would object to testimony that goes beyond that.

I also understand that Mr. Haynes intends to use Exhibit -- I think it's Exhibit 16?

MR. REICHEL: Jeff?

MR. HAYNES: Let me just break in here, Mr. Ettinger?

MR. ETTINGER: Yeah.

MR. HAYNES: This is Jeff Haynes. It's Exhibit 16 in the Part 31 matter and it's Exhibit 17 in the Part 632 matter.

MR. ETTINGER: Okay. That you're going to be using that Exhibit during Ms. Cohen's testimony, as we have, I believe, indicated in our information exchange. We do object to the use of that Exhibit on foundation, relevancy and hearsay grounds, so I'll just state that up front, as well.

That's all I have at this point. Bob?

MR. REICHEL: Yes. For the record, this is Bob

Reichel appearing on behalf of the Department of Environmental Quality. I would simply note that the Department joins in the objections, the evidentiary objection stated by Mr. Ettinger, and we will make any objections during this deposition as to form of questions.

I have nothing further.

MR. ETTINGER: I don't, either.

MR. GREENLEE: This is Ron Greenlee. Could we identify by document the Exhibit 16 and 17? I understand that Ms. Cohen has that document in front of her, but I've not seen it before, and I really don't know what it is.

MR. HAYNES: Yes, I can identify it. It is --

MR. ETTINGER: That's Jeff Haynes speaking; correct?

MR. HAYNES: This is what?

MR. ETTINGER: This is Jeff speaking?

MR. HAYNES: Yes, this is Mr. Haynes.

MR. ETTINGER: Okay.

MR. HAYNES: The document is entitled "Assessment of Migi Zii Wa Sin Eagle Rock," and it's on Keweenaw Bay Indian Community stationery, and it has attached to it four attachments labeled A through D. The document, itself, is twelve pages long, signed on page twelve by Summer Cohen, with two pages of references and then the attachments. Is that the document that's in front

of the witness?

MR. GREENLEE: That appears to be, although I'm still rifling through it at the moment. You say there were four Exhibits, A, B, and C?

MR. HAYNES: A, B, C, and D.

MR. ETTINGER: And, Jeff -- This is Dan Ettinger speaking. Am I correct that the last page of that entire document is signed by, and I'm probably going to mispronounce his name, Cecil E., I think it's Pavlat?

MR. HAYNES: Yes, that's the last page in my document.

MR. ETTINGER: Okay. Is that --

MR. GREENLEE: That is the last page on this document.

MR. HAYNES: All right, are we all set with that -- on that issue, Ron?

MR. GREENLEE: We're just about to be. I'm just rifling through this thing because I've not seen it before. Okay, that appears to be the document that she has in front of her. Thank you.

MR. HAYNES: All right, thank you. And this is Jeff Haynes again. As to the objection placed by Mr. Ettinger relating to the purpose of Ms. Cohen's testimony, I will note for the record that Petitioners are calling her relating to -- not relating to -- excuse me, not relating

to the cultural, historical or archeological resources which is Section 2(ee) of Rule 202, but rather in relation to the question of whether or not Eagle Rock is a place of worship within the meaning of Section 2(p) of Rule 202.

And, also, I would note for the record that the Administrative Law Judge says that in his Order issued April 9, that in the event that the Tribe's witnesses are brought forward for matters unrelated to standing, that objections may be revisited at that time.

So that contemplates the possibility that the Tribe's witnesses will be used for a basis other than standing.

MR. ETTINGER: Right. I just -- This is Dan Ettinger here just to close the loop on this.

Our view is that as part of our Motion to Exclude, that that included the places of worship issue, that it was extensively briefed in our Motion, and that in response to that, all Petitioners made the representation regarding the purpose of the testimony. So we'll renew our objections. We're renewing them here, and we'll renew them again before Judge Patterson.

MR. HAYNES: Understood.

MR. ETTINGER: That's all we got.

MR. HAYNES: All right. Well, then, let's proceed. For the record, Jeff Haynes representing the

Petitioners in this contested case proceeding.

SUMMER COHEN

called by the National Wildlife Federation and Yellow Dog Watershed Preserve, Inc., at 10:43 a.m., and being duly sworn, testified:

DIRECT EXAMINATION

BY MR. HAYNES:

Q Ms. Cohen, are you there?

A Yes.

Q Could you move a little closer to the telephone?

A Oh, okay. Can you hear me now?

Q Yes, we can -- I can hear you now.

MR. ETTINGER: Can you hear all of us okay?

THE WITNESS: Yes.

Q All right. And for the record, would you state your name, please?

A Summer Cohen.

Q And how old are you?

A Thirty-two.

Q And I understand that you are now pregnant?

A Yes.

Q When do you expect to deliver?

A Within a couple weeks.

Q And just for the record, a couple weeks would be during the middle of this hearing, and that's the reason why we are

taking your deposition today. Do you understand that?

A Yes.

Q Can you give us a brief description of your education?

A I attended Northern Michigan University. I have a degree in Political Science and PreLaw and a Minor in Native American Studies.

Q When did you receive your degree?

A In 2004.

Q And do you have any education that -- any formal education following your work at Northern Michigan University?

A No.

Q Did you receive a Bachelor of Science or Bachelor of Arts?

A Bachelor of Science.

Q Are you currently employed?

A Yes.

Q Who are you employed by?

A I'm employed by the Keweenaw Bay Indian Community.

Q How long have you been employed by the Keweenaw Bay Indian Community?

A Since 2004.

Q Can you give us a list of your jobs at -- or if it's only one job, your job at the Keweenaw Bay Indian Community?

A I am the Tribal Historic Preservation Officer.

Q And could you then give us a description of what the duties are of the Tribal Historic Preservation Officer?

A The Tribal Historic Preservation Officer is responsible for preserving cultural sites, historic sites, and archeological sites that are deemed valuable in the cultural sense to Tribal Members.

Q And when you say "cultural," does that include the spiritual aspect of the Tribe's Members?

A Yes, it does.

Q And just so that -- Let me back up. Ms. Cohen, can you give us your ethnicity, that is, what ethnic group you are a member of?

A I'm Native American. I'm Ojibwa. I am enrolled in Lac Du Flambeau, Wisconsin, but I'm also eligible to be enrolled here at KBIC.

Q And when you say "eligible to be enrolled," what do you mean?

A You can only be enrolled at one Tribe, and so I was enrolled at Lac du Flambeau since I was born, so I -- that's where I'm enrolled at.

Q What does it mean to be enrolled?

A To prove that you're Indian, you have to have a Indian card that's issued by a Federally recognized Tribe, and in order to do that, you must enroll with that Tribe and prove blood quantum.

Q I'm sorry, say the last part again?

A You have to be enrolled with a Federally recognized Tribe

to prove a blood quantum.

Q A blood quantum?

A Yes.

Q What does that mean?

A Such as I am enrolled as a half blood quantum of Ojibwa at Lac du Flambeau.

Q All right. As part of your duties as the Tribal Historic Preservation Officer to preserve the historic and cultural aspects of the Tribe, do part of your duties include speaking with Tribal Members about oral history?

A Yes, they do.

Q And can you describe for us what you mean and what your understanding is of "by oral history"?

A Well, from -- Traditionally Native American People did not have a writing system. They passed on their history through what's called "oral tradition," and it was passed on from generation to generation, and so on. And Native American People were -- typically had very good memories due to that oral tradition, and because there is no written history, we still rely on that oral tradition today.

Q And for what do you rely on that oral tradition?

A To pass on cultural and historical information to our people.

Q And is the oral tradition used in KBIC and the Ojibwa generally to pass on tradition about various natural

features that the Tribe Members use or view?

A Yes.

MR. ETTINGER: Objection, leading. This is Dan Ettinger.

Q You can answer.

A Oh. Yes.

Q Now as part of your duties as Tribal Historic Preservation Officer, have you had occasion to visit what some of us know as Eagle Rock, but what others, including the Tribe Members, know as Migi Zii Wa Sin? And I'll spell that for the Court Reporter. It's M-i-g-i space Z-i-i space W-a space S-i-n. Ms. Cohen?

A I'm sorry, could you repeat that?

Q Yes. As part of your duties as Tribal Historic Preservation Officer, have you had occasion to visit what some of us refer to as Eagle Rock, and other, including Tribe Members, refer to as Migi Zii Wa Sin?

MR. ETTINGER: Objection as to form; foundation.

Q You can answer.

A Oh. Yes, I have.

Q Can you tell us for the record, Ms. Cohen, where Eagle Rock is?

A Eagle Rock is located in-between Big Bay, Michigan and between -- or and L'Anse, Michigan, in the Upper Peninsula of Michigan in the Yellow Dog Plains.

Q And for what purpose, Ms. Cohen, did you visit Eagle Rock?

A I visited Eagle Rock on request of Tribal Members who had reported that there were cultural sites there that needed to be documented.

Q When did you first visit Eagle Rock?

A Approximately in 2005, I believe.

Q Can you describe for the record what you observed when you visited Eagle Rock in terms of what the formation looks like?

A When you're approaching Eagle Rock from the west, it's -- The Yellow Dog Plains is obviously a plains area that is flat. There are not a lot of trees and stuff. And once you get to the area that's referred to as Eagle Rock, or Migi Zii Wa Sin, you notice a rock feature, I don't know what else you would call it, that is Eagle Rock. It's very noticeable, because it is so different from the rest of the landscape.

Q And it's different in what way; in its height, in its shape?

A In its height and shape, and that there are not other rock formations in that area.

Q Now as part of your duties as Tribal Historic Preservation Officer, did you review a study prepared by BHE Environmental in Cincinnati, Ohio, of Eagle Rock?

A Yes, I did.

Q When did you perform that review?

A It's hard to say exactly, it -- probably around 2005, 2006.

Q I'm sorry, 2005 and 2006?

A Yeah.

Q In that range?

A Yeah.

Q Did you prepare a report -- Strike that. And then, as part of your duties as Tribal Historic Preservation Officer in June of 2007, did you perform a sort of a -- did you perform a resource assessment of Eagle Rock?

A Yes.

Q And what is the purpose of a resource assessment?

A The purpose of the resource assessment that we performed at Eagle Rock was to identify any manmade features that had not previously been documented in the BHE Assessment.

Q And what was the result of your resource assessment?

A I believe there were -- There were several sites that were identified.

Q Several sites. What kind of sites?

A Well, first of all, there was the pit feature on top of Eagle Rock.

Q What is the pit feature?

A It is actually not -- It hasn't been further analyzed to determine what the pit feature is, as is with all the other sites that we documented. It's a manmade feature that was

not documented. It's approximately maybe four feet by four feet, rounded off on the corners, and it is maybe a foot and a half to two feet deep.

Q And as part of your Assessment, did you assess the aspect of Eagle Rock that deals with traditional cultural properties -- excuse me, traditional cultural practices?

A Yes, I did.

Q And what do you mean by -- what would one speak of -- or what would one mean by "traditional cultural practices"?

A Native American People, or Ojibwa, have -- they live their life around their culture and traditions and -- similar to religion, I guess you could say, and in --

Q Would this be the spiritual aspect that we spoke of before?

A Yes. This is -- it's -- Could you repeat your question, please?

Q Sure. The primary question was: Did you have occasion to investigate traditional cultural practices as part of your duties as Tribal Historic Preservation Officer?

A Okay. Yeah, we -- or my office did investigate traditional cultural practices.

Q And how is it that you investigate those practices?

A I talk to Tribal Members and other Native People who have visited the site as to what it is they are utilizing the site for.

Q About how many Tribal Members and others did you talk to in

your investigation?

A I was able to talk to approximately fifteen people regarding the traditional cultural practices at that site.

Q And these people are Tribal Members?

A They are Tribal Members; some of them are enrolled at other Tribes, though.

Q And did you reduce their comments to you to writing?

A There are some statements from some Tribal Members that have been put down in writing.

Q And are those attached to your Assessment?

A Yes. Those are the ones attached to the Assessment.

Q Well, let's mark as Deposition Exhibit One the document that's been previously identified as Petitioner's Exhibit 17 in the Part 632 case and Petitioner's Exhibit 16 in the Part 31 case.

(At 11:05 a.m., Deposition Exhibit One marked)

Q (By Mr. Haynes) Do you have that document in front of you, Ms. Cohen?

A Yes, I do.

MR. ETTINGER: And just for the record, Jeff, this is Dan Ettinger. I just want to renew my objections on the basis of hearsay, relevance, and foundation to that document.

MR. REICHEL: And this is Bob Reichel. I join

in those objections.

MR. HAYNES: This is Jeff Haynes. Understood.

Q Ms. Cohen?

A Um-hmm.

Q The documents that you have in front of you, which were reviewed before the deposition started off the record, contains twelve pages of text with your signature on the twelfth, does it not?

A Yes.

Q And then following your -- the signature page, there are two pages of references; is that correct?

A Yes.

Q And then there are four attachments labeled "A, B, C, and D"; is that correct?

A Yes, it is.

Q And for the record, Attachment A is entitled, as I read it, "A Michigan Archeological Site Forum." Do you see that?

A Yes.

Q Attachment B is entitled, "Recorded Archeological Sites on the Silver Lake Basin." Do you see that?

A Yes.

Q Attachment C is entitled "Statements Regarding Cultural Use on Yellow Dog Plains and at Migi Zii Wa Sin." Do you see that?

A (No verbal response)

Q Ms. Cohen?

A Yes.

Q Do you see Attachment C?

A Yes.

Q Ms. Cohen?

A It's in -- I'm sorry, the --

Q Are you looking at Attachment C?

A Yes. It was -- The Attachment C --

Q Which is entitled --

A -- page was on the wrong -- in the wrong order.

Q And then do you also see Attachment D, "Letters Regarding Cultural Uses of the Proposed Mine Site by Local Tribal Communities"?

A Yes.

Q Now before we identified this Exhibit, Ms. Cohen, we were talking about the statements by Tribal members, some of whom are enrolled in the Keweenaw Bay Indian Community. Are those statements the ones that are attached to -- excuse me, included in Attachment C?

A One moment.

Q Just take your time to review that.

A Okay. The statements are by Tribal Members from KBIC and other Tribes.

Q Thank you. Now, Ms. Cohen, this Exhibit that you have in front of you, the Assessment of Migi Zii Wa Sin, is your --

is this your summary of your investigation of Eagle Rock as you described before?

A Yes.

Q And getting back to the statements by the Tribal Members, do you -- have you arrived at an understanding of how the Tribal Members understand the significance, if any, of Eagle Rock for the Tribe?

MR. ETTINGER: Objection as to form; vague.

MR. HAYNES: You know, Dan, I think you're right. Let me rephrase it.

Q (By Mr. Haynes) Ms. Cohen, you testified before that Tribal Members spoke to you about their views of Eagle Rock as a cultural and spiritual resource; is that correct?

A Yes.

Q And did they speak to you based upon, to your knowledge, some writing, or was it based upon the oral tradition?

A Based upon oral tradition.

Q I'm sorry, the phone cut out. Based upon what?

A Oral tradition.

Q Thank you. And what is your understanding, Ms. Cohen, of the oral tradition of Eagle Rock as it relates to KBIC and other Tribal Members?

A Eagle Rock is a place where people go to pray, offer -- make offerings to the spirits.

Q And is Eagle Rock located in relation to any other mountain

tops that may have significance for the KBIC traditions?

MR. ETTINGER: Objection, leading.

MR. HAYNES: I'll rephrase it.

Q (By Mr. Haynes) Ms. Cohen, are there other physical features in the Upper Peninsula that are part of the oral tradition of the Ojibwa and of KBIC?

A Yes, there are.

Q And do the Tribal Members refer to these mountain tops by any particular name?

MR. ETTINGER: Objection, leading.

Q (By Mr. Haynes) You can answer.

A I believe that the names that are used by those place now, the current names that are -- identifies them as the names that have been given to me, as far as what they are referred to by Tribal Members.

Q And how do the Tribal Members refer to them when they speak to you?

A They -- Well, such as Brockway Mountain, which is in the Keweenaw Peninsula.

MR. ETTINGER: I'm sorry, can you repeat that, Ms. Cohen? This is Dan Ettinger.

THE WITNESS: There's a place over in the Keweenaw Peninsula, which is north of here. I've been told that it is called Brockway Mountain.

MR. ETTINGER: Brockway?

THE WITNESS: Um-hmm.

MR. ETTINGER: Okay, thank you.

THE WITNESS: That is a current name; not a traditional name.

Q (By Mr. Haynes) What is the traditional name?

A I couldn't tell you that.

Q I see. And have members of KBIC, in their oral tradition, referred to mountain tops distant to the east that are named "Otter" and "Turtle"?

MR. ETTINGER: Objection, leading.

Q (By Mr. Haynes) Ms. Cohen?

A Yes, they have.

Q Is that part of the oral tradition?

A Yes, it is. Actually, they're not actually named that. They are described by their shape.

Q I see. My mistake. I apologize. And does Migi Zii Wa Sin have any relation to those mountain tops that are described by their shape of otter and turtle?

A Yes. According to the oral tradition and in the Mide Religion, they are related to Migi Zii Wa Sin, especially to KBIC.

Q And can you describe that relationship for us?

A From the site where the traditional or the original Mide Lodge stood at KBIC here in Baraga, there is a oral tradition that says that there are two mountains, one the

shape of a turtle, one the shape of an otter, and in-between those in the distance, there is another high point which is -- has been identified as Eagle Rock, or Migi Zii Wa Sin, where an eagle -- I don't know exactly the --

Q But Migi Zii Wa Sin has been identified by Tribal Members as --

A Yeah.

Q -- in their oral tradition as a place of significance; is that correct?

A Yes. Yes.

MR. ETTINGER: Objection, leading.

Q (By Mr. Haynes) And, Ms. Cohen, as part of your investigation of Eagle Rock, or Migi Zii Wa Sin, have Tribal Members described to you how they used Eagle Rock, if at all, for traditional cultural practices?

A Yes, they have.

Q I'm sorry, the answer?

A Yes, they have.

Q And could you tell us how they described these traditional cultural practices?

A They are not all the same, but some go there to fast, some just to make offerings, others have used that area for harvesting medicinal plants.

Q And from your investigation as the Tribal Historic Preservation Officer in talking with members of the Tribe

and others, did these traditional practices occur around Eagle Rock or also on top of Eagle Rock?

A The ones that I mentioned are mostly on Eagle Rock, if not very -- in the very near vicinity of the rock feature.

Q And in your interviews of the Tribal Members, Ms. Cohen, did the Tribal Members relate to you how they view Eagle Rock in terms of it being animate or inanimate?

MR. ETTINGER: Objection, leading.

Q (By Mr. Haynes) You can answer.

A Well, because they -- high places are considered sacred because they are close to the creator, and I've also been told that Eagle Rock, itself, has a spirit within in, and so it is animate.

Q Did the Tribal Members speak to you about the -- about Eagle Rock in any terms of whether or not it was a sacred site?

A Yes.

Q And what did they say?

A Well, that's usually what they first would say is, "This is a sacred site. You've got to protect it." So --

MR. ETTINGER: I'm sorry, I didn't -- I didn't hear what you said, ma'am?

THE WITNESS: Usually when I was approached, that's the first thing a Tribal Member would say is that, "It's a sacred site, and it needs to be protected."

Q (By Mr. Haynes) And do you have an understanding of sacred site that is specialized in terms of your duties as Tribal Historic Preservation Officer, or is this just a generalized notion?

MR. ETTINGER: Objection, vague.

MR. HAYNES: I'll withdraw the question. I think you're right, Dan. Let me rephrase it.

Q (By Mr. Haynes) Ms. Cohen, is the term "sacred site," one that is a special term used by the Ojibwa, or are you using that in a generic sense?

MR. ETTINGER: I'm going to object to that as leading.

Q (By Mr. Haynes) You can answer.

MR. ETTINGER: Sorry, we have to make the record.

A (By The Witness) Well, according to the National Historic Preservation Act, there are definitions for cultural sites which include sites that are sacred, but I believe that definition is -- would be a generic definition that would apply to any site, not just a Native American site.

Q (By Mr. Haynes) And in your duties as Tribal Historic Preservation Officer, based upon your interviews with Tribal Members and others, do you have a view of whether Eagle Rock is significant to the beliefs, customs, or

practices of the Ojibwa People?

A Yes, I believe it is significant to the beliefs and cultural practices of the Ojibwa People, the Anishinaabe People.

Q I'm sorry, say the -- say the name again?

A The Ojibwa People and the Anishinaabe.

Q And maybe we should have covered this at the beginning. Who are the Anishinaabe, and would you spell that for us, please?

A I'll do my best. A-n-i-s-h-i-n-a-a-b-e.

MR. ETTINGER: Jeff, I believe this is probably preserved, but just to make sure, I do want to object to the offering of opinion testimony here.

MR. HAYNES: Understand. And, I'm sorry, Madam Court Reporter, could you read us back the question and the answer?

(At 11:18 a.m., the record was played back for Counsel and the witness.)

MR. HAYNES: Thank you.

Q (By Mr. Haynes) Ms. Cohen, your investigation of Eagle Rock is set forth in the Assessment, which is Petitioner's Exhibit 17; is that right?

A Yes.

Q I have no further questions at this time.

MR. ETTINGER: All right, this is Dan Ettinger

on behalf of Kennecott. I do want to just say at the outset that, obviously, we can't have rulings on evidentiary objections here, so I just do want to make it clear that the -- to the extent that I do go beyond standing at all in my cross examination that I explore the places of worship issue that has been introduced here, it is strictly in the event that Judge Patterson permits the introduction of that evidence from Ms. Cohen. That's the only reason that we're exploring this at this time.

MR. HAYNES: Understood.

CROSS EXAMINATION

BY MR. ETTINGER:

Q Ms. Cohen, good morning. You're not contending, are you, that the outcrop that you're referring to at Eagle Rock is a building, are you?

A No.

Q And you're not contending that it's a building used for human occupancy, are you?

A No.

Q Now you don't mention anywhere in your Assessment that you consider the outcrop that you refer to as "Eagle Rock" as a place of worship under Part 632, do you?

A No.

MR. HAYNES: Objection, assumes that the witness understands what Part 632 is.

Q (By Mr. Ettinger) Do you know what Part 632 is?

A Could you refresh my memory?

Q Do you understand that that's the Mining Statute, correct, in Michigan, that governs the project that Kennecott has proposed?

A Okay, yes.

Q Do you understand that?

A Yes.

Q And you understand, because you talked about it in your direct, that KBIC's contention is that it is a place of worship under that statute and the regulations; correct?

A Yes.

Q But you don't mention that anywhere in your Assessment, do you, that it's a place of worship under the statute?

A I don't believe so.

Q Now your Assessment relates to the alleged knowledge and experience of others; correct?

A Yes.

Q It's not based on your independent knowledge of activities at the site; correct?

A Right.

Q Were you ever at the site that you refer to as Eagle Rock before you became THPO for KBIC?

A Yes.

Q You have been at that site?

A Um-hmm.

Q Before you became THPO?

A Yes.

Q Ms. Cohen, are you aware that the permit application, the mining permit application was submitted by Kennecott to the State in around February of 2006; are you aware of that?

A I didn't know the exact date.

Q Does that sound about right?

A Yes.

Q Okay. And you and others at Keweenaw Bay Indian Community were aware of the proposed mining project well before then; correct?

A Yes.

Q And you were aware of the location of the proposed mining project well before then; correct?

A Yes.

Q And you were aware of that when you were hired as KBIC's Tribal Historic Preservation Officer; correct?

A No.

Q You weren't? You became aware of that once you became Tribal Historic Preservation Officer?

A Yes.

Q Okay. Now before February of 2006, you never contacted anyone at Kennecott or the State to let them know that that rocky outcrop that you consider -- you call "Eagle Rock,"

was sacred to Keweenaw Bay Indian Community, did you?

A I'd have to look back and check. I really couldn't tell you "yes" or "no."

Q But it would be in an email or in a letter; correct?

A Not necessarily.

Q Not necessarily? Would you have called somebody?

A I have had conversations with the State Historic Preservation Office.

Q Did you communicate with anybody from Kennecott before February of 2006 to let them know that?

A I spoke to John Cherry, but I cannot remember the date.

Q Okay. And you're saying that the only information establishing the importance of the outcrop to the Tribe, that you call "Eagle Rock," that's through oral history; correct?

A Yes.

Q There's no documentation of it other than what you've submitted with your Assessment?

A Not that I came across.

Q Okay. And you did a pretty thorough examination?

MR. HAYNES: Objection to the form.

Q (By Mr. Ettinger) You looked at historical records; correct?

A I looked at some historical records. I'm not a historian, so I --

Q And you're not an archeologist, either; correct?

A Correct.

Q Okay. But you didn't find any maps that referred to Eagle Rock; correct?

A No. I mean correct.

Q Now you -- the Assessment that's Exhibit One, that wasn't provided to the State until around December 11th, 2007; correct?

A (No verbal response)

Q Ms. Cohen?

A I don't know the date that they were presented to it.

Q Well, it --

A What was the date you had said?

Q December 11th, on or about that date; does that ring a bell?

A Yes.

Q Okay. And because you had a meeting with the State where it was presented; correct? And when I say "you," KBIC, and you were a member and you were a part of that meeting; correct?

A We did not meet with the State when it was presented.

Q You presented it afterwards?

A Is he talking about the site forum?

Q I'm sorry, Ms. Cohen?

MS. HALLEY: Ask him for a clarification.

A (By The Witness) Are you talking about the site forum that was sent in --

Q No, I'm talking about Assessment of Migi Zii Wa Sin.

A I don't --

MR. HAYNES: Exhibit One.

MS. HALLEY: The whole document.

A (By The Witness) Okay, yes, I was there. Oh.

Q (By Mr. Ettinger) I'm sorry, I apologize if I was unclear. If you don't understand one of my questions, please let me know.

A All right.

Q And that wasn't provided until December of 2007 to the State; correct?

MR. HAYNES: Asked and -- Objection, asked and answered.

Q (By Mr. Ettinger) I just want to make sure I have the answer. There seemed to be a little confusion.

A You're asking when the Assessment was given to the State?

Q Yes.

A I believe they had it before we had the meeting.

Q They had this document, Exhibit One, Assessment of Migi Zii Wa Sin?

A Um-hmm, yes.

Q Okay. Do you have any idea how long before then they may have had it?

A No, I don't.

Q Okay. And that document was never provided by the Indian Community or by you to Kennecott; correct?

A Not to my knowledge.

Q Okay. You didn't provide it, did you?

A No, I did not.

Q And are you aware that Kennecott obtained the document, the Assessment of Migi Zii Wa Sin, which is Exhibit One, through FOIA a few months ago?

A Yes.

Q In fact, when you and others at KBIC found out that Kennecott had FOIAed that document from the State, that the Tribe strenuously objected to the State producing that document to Kennecott; correct?

A I --

Q You're aware of that; correct?

A I know there was talk of that. I don't know exactly what.

Q You're aware that Keweenaw Bay Indian Community did not want the State to disclose that document to Kennecott; correct?

MR. HAYNES: Objection, asked and answered. You can answer, Ms. Cohen.

A (By The Witness) Oh. I am aware that they did want to object.

Q I'm sorry?

A I'm aware that they -- that KBIC did want to object.

Q And that they did, in fact, object; correct?

A (No verbal response)

Q Correct?

A I really don't know what happened after I was told that it was FOIAed.

Q Mr. Haynes was asking you earlier about a preliminary surface cultural resource assessment that was done, I believe, in June of 2007. Do you recall talking about that?

A Yes.

Q Now you indicated that you did that assessment, but wasn't that done by Mr. James Paquette?

A Oh, I'm sorry. I assisted in that assessment.

Q You assisted in that you asked him to do it, and then you participated in the field survey; correct?

A Right.

Q But it wasn't -- the assessment, itself, wasn't done by you; correct?

A Right.

Q You know that Mr. Paquette is not a professional archeologist; correct?

A Yes.

Q And your assessment was not meant to be a Phase I Study under the NHPA; correct?

A Right.

Q Because Mr. Paquette is not professionally qualified to do such study, is he?

A Not -- No, he's not.

Q And you aren't, either; correct?

A No.

Q And as far as you know, Keweenaw Bay Indian Community has never submitted a Phase I Study by a professional archeologist to the State of Michigan, has it?

A No, it's not our responsibility.

Q And it hasn't submitted one to Kennecott, either, has it?

A No. Can I say more than --

MR. ETTINGER: Can I take a two minute break? I may be done.

MR. HAYNES: Sure.

A (By The Witness) Can I say something else? I had contacted professional archeologists who were specialists in the U.P. and U.P. archeology, and they referred me back to Jim Paquette.

Q (By Mr. Ettinger) Okay, thank you.

MR. ETTINGER: Let's take a quick break. Can we go off the record, please?

(At 11:28 a.m., off the record)

(At 11:31 a.m., on the record)

MR. ETTINGER: Everybody else ready?

MR. HAYNES: Yes.

MR. ETTINGER: I don't have any further questions at this time. Thank you, Ms. Cohen.

CROSS EXAMINATION

BY MR. REICHEL:

Q This is Bob Reichel. Ms. Cohen, again, as I stated earlier, I'm an attorney who represents the Michigan Department of Environmental Quality in this case. I think I -- I hope I have just a few follow up questions, and, again, for the record, like Mr. Ettinger, I'm only asking these questions in anticipation of the possibility to which we object that this testimony would be admitted in the case. I'm not waiving the previously stated objections.

Ms. Cohen, you've talked quite a bit about the Assessment of the Migi Zii Wa Sin document that's been marked as Exhibit One here, or referred to as Exhibit One, I guess. At one point, you were asked whether the Keweenaw Bay Indian Community provided a copy of that document to the State of Michigan. Do you recall being asked about that?

A Yes.

Q Okay. And if you recall, did you participate in a meeting that occurred in December of 2007 between some representatives of the KBIC and the State, a consultation, if you will, about the proposed Eagle Mine Project?

A Yes.

Q Okay. And do you recall -- I know you were asked about this, but I want to be clear. Do you recall whether this Assessment document that, I take it, was discussed in that meeting, whether that document had been provided to the State in writing before that meeting occurred?

A Yes. It was also included in the -- the -- what's it called --

Q I'm sorry, it was included in the --

A It was included in KBIC's entire response to the approval of the application, or the permit.

Q Okay. Let me just explore that to make sure I understand what you said. Obviously, you're well aware that KBIC submitted comments to the DEQ and the DNR about this project, including comments submitted in the fall of 2007; is that your understanding?

A Oh, actually, I'm sorry, I got the timeline messed up.

Q Okay. So do you want to clarify one of your previous answers?

MS. CHAPMAN: Because we have an issue with --
Oh, back on the record, I'm sorry.

MR. REICHEL: I'm sorry, I couldn't hear that.

MS. CHAPMAN: This is Heather Chapman, and we just have an issue with that document that we wanted to admit as an Exhibit. That's the original in our file here.

We can make copies. I mean, it's up to the attorneys what you want to do.

MS. HALLEY: We've actually decided not to mark it.

MS. CHAPMAN: Decided not to mark it. I've been gone asking questions, so I didn't -- I missed that.

MR. ETTINGER: Yeah, we're fine. We're fine with that.

MS. CHAPMAN: Everybody's happy?

Q (By Mr. Reichel) Okay. This is Bob Reichel. Again, I just want to go back -- unless there's something, Ms. Cohen, you wanted to add to my previous question, I -- I just want to be clear on this point.

A Um-hmm..

Q You had participated in the consultation between the KBIC and certain representatives of the State in December of 2007; correct?

A Yes.

Q And during that meeting, this Assessment document was discussed; correct?

A Yes.

Q And, again, I apologize for repeating the question, but I'm honestly confused here. Do you believe that this same Assessment document had previously been submitted by KBIC to either the Department of Environmental Quality or the

DNR during the public comment process?

A No, actually, no that --

Q It was not. Okay, thank you for clarifying.

A I don't know.

Q Okay. Do you know if either you or anyone else from the Keweenaw Bay Indian Community transmitted this Assessment document to the State of Michigan Historic Preservation Office?

A I know they have it now. I don't know if they had it previously.

Q Okay. I guess I'm just asking, did you, individually or any other representative of KBIC, ever send a copy of it to the State Historic Preservation Office? That's all I'm trying to understand.

A I don't know what other representatives did, but I don't believe I gave them a copy.

Q Okay. If I can have just a moment to look at my notes, I think I'll -- I think I'm done.

A That Assessment wasn't even done until -- I mean, finalized until December of 2007.

Q Okay. Thank you for clarifying that, because actually, as I'm looking at the document, I don't see a date on it. Is that correct, there's no date that appears in the text of the document, itself?

A Yeah, you're correct.

Q Okay. So to the best of your knowledge, and you were the author of the document?

A Right.

Q It was finalized in December of 2007?

A Yes.

Q Okay. I don't have any further questions at this time. Thank you.

REDIRECT EXAMINATION

BY MR. HAYNES:

Q Ms. Cohen, this is Jeff Haynes again. I have a few follow up questions. You mentioned, in your answers to Mr. Ettinger, that you spoke with John Cherry. Who do you understand John Cherry to be?

A He is one of the spokespeople for the Kennecott Mine here.

Q I see. And when did you speak with him?

A I'm not quite sure of the date. It was probably around 2006. There was a Journalism Fellowship Program that came up to the U.P. to talk about the proposed mining, and John Cherry was there, and at that time, we did discuss that there were cultural sites located within the proposed mine site.

Q And did you ever meet with John Cherry after that date?

A No.

Q Was there ever a meeting that was set up to meet with Kennecott, between the Tribe and Kennecott?

A Yes, there was.

Q And when was that?

A That was July of 2007.

Q And was the Tribe prepared to meet with Kennecott?

A Yes, we were.

Q And did the meeting occur?

A No, it did not.

Q Do you know why?

A I do not know exactly why it was cancelled. I was just told approximately twenty-four hours before the meeting by Mr. Cherry that it was cancelled and it would be rescheduled.

Q Was the meeting ever rescheduled?

A No.

Q I have no further questions at this time.

RE-CROSS EXAMINATION

BY MR. ETTINGER:

Q I do have -- This is Dan Ettinger. I do just have one or two follow up questions, Ms. Cohen. The -- I'd like to refer back to the cultural pit feature, and it relates to the question that Mr. Haynes was just asking, and, again, I'd say that subject to my earlier objections, that I'm not waiving my objections by asking these questions.

The cultural pit feature that you refer to in your Assessment, it's been identified as 20MQ251; correct?

A Correct. Yes.

Q And that's not the outcrop, itself, is it? That's the pit feature on the outcrop; correct? That's what this is --

A Yes.

Q -- identifying.

A Yes.

MR. HAYNES: Just for the record, Mr. Ettinger, can you relate to us where in the document you're referring to the --

MR. ETTINGER: Page five.

MR. HAYNES: Page five. Thank you.

MR. ETTINGER: But it's also something she's referred to earlier.

MR. HAYNES: I was looking for the designation.

MR. ETTINGER: Okay.

Q (By Mr. Ettinger) And you understand that that designation is for record keeping, correct, for the State?

A Yup.

Q And that doesn't mean that that feature is of archeological significance; correct?

A Yup.

Q Okay. And you understood that Kennecott and Kennecott's archeologists were planning to go out to that site in June or July of 2007 to investigate 20MQ251; correct?

A Yes, that's the meeting that was cancelled.

Q All right. And you said that you don't know why it was cancelled?

A Not that I can recall anyways.

Q But you think there may be documentation on that?

A No. Well, I'm sure there's documentation somewhere. All I was told was that it would be rescheduled.

Q Have you reviewed documentation that explains why that was cancelled?

A I don't believe so.

Q You're aware, aren't you, Ms. Cohen, that under the surface lease between Kennecott and the State, that the State -- excuse me, that Kennecott is prohibited from conducting mining operation activities on the outcrop; correct? You're aware of that?

A Yes. No. I'm sorry.

Q You're not aware of that?

A That I'm aware that they are prohibited from mining operation on?

Q Yes.

A No, I was not aware of that.

Q Okay. Are you aware that the meeting was -- the meeting with Kennecott was cancelled because it was determined that the best thing to do would be to leave 20MQ251 alone, rather than disturb it through archeological investigation?

A No.

Q You don't remember reading about that?

A No, I do not.

Q And you were never told that?

A Not that I recall.

Q Do you have any reason to believe that's not the case?

MR. HAYNES: Objection as to form. You can answer.

A (By The Witness) What was the question?

Q (By Mr. Ettinger) Do you have any reason to believe that that's not the case?

A Oh. Yes.

Q You do have reason to believe that?

A Yeah. There are shovel testing spots by BHE on top of Eagle Rock, so they have studied it in the past, so --

Q Sure. But you understand that archeology often involves disturbance of the ground; correct?

A Um-hmm.

Q And if a site is potentially of any significance, the safest thing to do from an archeological standpoint is not to disturb it; correct?

A Yes.

Q No further questions at this time.

MR. REICHEL: This is Bob Reichel. I have no further questions.

MR. HAYNES: This is Jeff Haynes. I have no

further questions. Ms. Cohen, thank you very much for your participation today. We appreciate it, and I think this concludes the deposition unless anybody else has anything else to say.

MR. ETTINGER: I do not at this time. Thank you, Ms. Cohen. We appreciate your time.

MR. REICHEL: This is Bob Reichel. I don't have anything else, and, again, thank you, Ms. Cohen.

MR. HAYNES: Let's go off the record.

(Deposition concluded at 11:45 a.m.)

STATE OF MICHIGAN)
) ss:
County of Houghton)

I certify that this transcript, consisting of 45 pages, is a complete, true and correct record of the testimony of SUMMER COHEN, held in this case on April 25, 2008.

I also certify that prior to taking this deposition, SUMMER COHEN was duly sworn to tell the truth.

I also certify that I am not a relative or employee or an attorney for a party, or a relative or employee of an attorney for the party, or financially interested in this action.

April 26, 2008

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